

**Tentative Order No. R8-2002-0011
NPDES No. CAS 618033
Riverside COUNTY
MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) PERMIT**

Comment letters were received from the following:

- I. First Draft – March 22, 2002
 - A. Permittees- Riverside County Flood Control and Water Conservation District (RCFC&WCD) (May 10, 2002) – Comments 1 – 32
 - B. Riverside County Board of Supervisors (May 10, 2002) – Comments 30 – 33
 - C. Response to “Handouts” at the May 31, 2002 Workshop – Comment 34
 - D. City of Lake Elsinore (May 10, 2002) – Comment 35
 - E. City of Perris (May 10, 2002) – Comments 36
 - F. Natural Resources Defense Council (May 9, 2002) – Comments 37 - 81
 - G. Construction Industry Coalition on Water Quality (May 13, 2002) – Comments 82 – 97
 - H. Sempra Energy (May 30, 2002) – Comments 98 – 104
 - I. Response to Southern California Water Quality Coalition (May 31, 2002) - Comments 105 - 111
 - J. Megan Fischer – San Diego Regional Water Quality Control Board (April 17, 2002) – Comment 112
- I. RESPONSE TO COMMENTS ON THE FIRST DRAFT (March 22, 2002)

(Most of the comments are verbatim from the comment letters)

A. RESPONSE TO (RCFC&WCD) (May 10, 2002):

- 1. **Comment: Impairments of Receiving Water Quality in Western Riverside County are Limited:** *The water quality impairments identified by the Regional Board are summarized in the Draft 2002 California 303(d) List and TMDL Priority Schedule. The only impairment identified as associated with an urban source in the Permitted Area is sedimentation/siltation in Lake Elsinore. However, it is unclear how even this impairment could be related to urban sources as there is no urban development between Canyon Lake and Lake Elsinore. Nevertheless, the affected Permittees are actively participating with the Regional Board in the development of a TMDL to address this impairment. In addition, the Regional Board has adopted the San Jacinto Watershed Construction Activities Storm Water Permit to address this*

impairment pending development of the TMDL.

Response: It is a well established fact¹ that urban runoff, including storm water, adversely impacts water quality. The MS4 program was established to control the discharge of pollutants in urban runoff to the maximum extent practicable (MEP). The federal statutes and the U.S. EPA regulations require the municipalities to control pollutants in urban runoff irrespective of whether the discharge is to impaired waters or not.²

Also, please note that in many cases the exact cause of impairment was not fully identified prior to listing a waterbody on the 303(d) list. So it may be premature to conclude that Lake Elsinore is the only waterbody within the permitted area that is impacted by urban runoff.

The storm water statutes and regulations are not only to address current impairment, but also to prevent future problems. The San Jacinto Construction Activities Storm Water Permit only addresses pollutants from construction activities; the MS4 permit regulates the discharge of pollutants from all sources that may have an impact on urban storm water quality.

2. **Comment: Urban Runoff Constitutes a Minor Component of the Flow and Loading to the Receiving Waters in Western Riverside County:** *Based on our knowledge of the water resources in the permitted area of Riverside County, urban runoff is only a minor contributor to the water quality problems. Virtually all of the base flow in the Santa Ana River consists of discharges from Publicly Owned Treatment Works (POTWs) which are permitted by the Regional Board and little of the flow (or pollutants) are contributed by urban runoff. The quality of these flows are significantly impacted by discharges from dairies, which are also permitted by the Regional Board, and agricultural runoff, which is exempt from regulation under NPDES (although not from Waste Discharge Requirements). Similarly, during storm conditions, urban runoff is a minor component of the flow and pollutant loading.*

As illustrated in Appendix 1 of the Tentative Order, only one-sixth of the area of western Riverside County in the Santa Ana Region is considered "urbanized", and much of this area is open space or lightly developed. For example, these areas are not as intensely developed as the area of Orange County located in the Santa Ana Region.

Response: The MS4 permit regulates the discharge of storm water from the MS4 systems to waters of the U.S. As indicated in the comment above, the Regional Board already regulates most other point source discharges. The comment also indicates that under dry weather conditions, the urban runoff reaching waters of the

¹ *Report to Congress on the Phase II Storm Water Regulations* (U. S. EPA 1999) [AR, Vol. 14, Item 70]; *Environmental Impacts of Storm Water Discharges* (U. S. EPA, 1992)

² Clean Water Act Section 402(p); 40 CFR Parts 122, 123 and 124

U.S. is negligible. However, during a storm event, pollutants from the streets, industrial, commercial and construction sites are carried by storm water runoff into waters of the U.S. The control measures required under the proposed MS4 permit are necessary to control the discharge of pollutants in storm water runoff.

3. **Comment: The DAMP and Supporting Documents Outline an Effective and Appropriate Urban Runoff Quality Management Program for Western Riverside County:** *The DAMP has served as the urban runoff quality management program guidance document for the permitted area since 1993. The Regional Board approved the Drainage Area Management Plan (DAMP) on January 18, 1994. Supporting Documents including Supplement A, Enforcement Compliance Strategy and the Municipal Facilities Strategy have been developed to further enhance the programs described in the DAMP. A process to update the DAMP as described in the Report of Waste Discharge (ROWD) is currently underway. The purpose of the update is to incorporate numerous program improvements that have occurred since the initial DAMP was written. Neither the storm water program requirements specified in the 1987 Amendments to the Clean Water Act nor the Federal regulations issued in 1990 that implement these requirements have been amended.*

The permittees developed an Enforcement/Compliance Strategy (E/CS) to provide a framework to enforce local storm water and erosion control ordinances. The E/CS has been an efficient and cost-effective means to comply with the Federal NPDES regulation 40 CFR 122.26(d)(2)(i)(A) that requires permittees to demonstrate control:

“...through ordinance, permit, contract, order or similar means, the contribution of pollutants to the municipal storm sewer by storm water discharges associated with industrial activity and the quality of storm water discharged from site of industrial activity.”

Under the E/CS framework, permittee staff verify that an industrial or construction activity has obtained coverage (if required) under the State General Industrial and Construction NPDES storm water permits. The permittees are not responsible for enforcing the State permits mentioned above.

The Riverside County Environmental Health Department has incorporated a stormwater component to the existing inspections of approximately 3000 industrial facilities and 6600 retail food service activities throughout Riverside County. Through this inspection component, known as the Compliance/Assistance Program (C/AP), inspectors accomplish stormwater program compliance assistance by distributing educational materials, performing outreach and documenting essential stormwater management activities using a one-page survey form. The stormwater C/AP is shown in Table 1 (end of this document). The E/CS and the C/AP meet the Federal requirements to control pollutants from the MS4, to identify priorities for inspections, and to hold industrial activities accountable for urban runoff from their respective sites. In addition, the Permittees have implemented programs to prohibit illicit connections and illicit discharges to the MS4 systems. Due to the low or absence of

non-storm flows in most storm channels in western Riverside County, illicit or illegal discharges are readily identified and eliminated by the Permittees.

The current E/CS augmented by the C/AP and other existing oversight programs satisfy the Federal requirements for "Maximum Extent Practicable" in a cost-effective manner for western Riverside County. This is evidenced by the absence of identified water quality problems associated with commercial and industrial facilities and activities, including restaurants, in western Riverside County:

The existing and proposed 303(d) lists do not identify any receiving water impairments associated with these facilities or activities.

The Regional Board has not otherwise identified any problems associated with these facilities and activities in the permitted area, and

The Permittees have not identified any water quality problems associated with these facilities and activities in the permitted area.

Additionally, as shown in Table 2, various scheduled inspections are conducted by municipal agencies that constitute a credible program to monitor industrial urban runoff management and enforce local ordinances. Municipal code enforcement staff provide another layer of oversight for preventing and eliminating improper discharges and exacting compliance with local ordinances, shown in Table 3.

The Permittees believe that the increased inspection requirements beyond the current DAMP and E/CS program that are proposed in the Tentative Permit are not warranted in the absence of relevant technical information that specific water quality issues in western Riverside County would be addressed and alleviated by the increased municipal inspection program.

Response: The current DAMP, EC/S document, and the storm water compliance assistance/educational programs were all developed in compliance with the requirements specified in the first and second term MS4 permits. These plans and programs will continue to be an important part of the MS4 program. However, a review of the data submitted by the permittees in the most recent annual report indicates that water quality standards are not being met for all constituents on a consistent basis. When water quality standards are not being met, the permittees are required to implement more aggressive programs and policies consistent with the MEP standards. The proposed Order specifies some of these programs and policies. However, based on the input provided by the permittees, the inspection requirements specified in the first draft of the MS4 have been revised to more accurately reflect the various inspection programs currently being implemented by the permittees. Please note that the federal regulations³ require the municipalities to inspect industrial facilities discharging into their systems.

³ 40 CFR 122.26(d0(2)(iv))©

4. **Comment: Finding 6-***Finding 6 references certain studies conducted by USEPA, the states, flood control districts and other entities relating to major sources of urban storm water pollution nationwide, including industrial and construction sites. This finding is then used to impose heightened inspection requirements on the Permittees for industrial and construction sites. However, there is nothing in Finding 6 which links these studies to the unique problems of western Riverside County, particularly the problems associated with the high concentration of dairies in the area which are regulated under the Board's General Dairy Permit, the contributions of discharges from Publicly Owned Treatment Works (POTWs) which contribute to virtually all of the non-agricultural flow in the Santa Ana River, or the significant contribution of cultivated agriculture. Such a finding, if included, would not be supported by the observations of the Permittees or the information submitted by the Permittees in their Annual Reports submitted during the current MS4 Permit term. Further, there is no verification that the studies cited are applicable to western Riverside County or that municipal runoff is causing significant water quality problems sufficient to warrant increased compliance requirements. Therefore, this finding lacks evidentiary support and does not support the new development, special studies and heightened inspection requirements proposed in the Tentative Order.*

Response: Finding 6 merely recognizes the three main sources of pollutants in urban storm water runoff. We have no information to indicate that the sources indicated here are not causing or contributing pollutants to urban runoff within the permitted area. The storm water monitoring data and other information provided by the permittees did not indicate a significant difference in the quality of urban runoff from western Riverside County. Please note that the compliance requirements specified in the MS4 permit are consistent with the MEP standard and are as per requirements in the federal statutes and regulations.

5. **Comment: Finding 12-***Finding 12 states that, while the Regional Board is the enforcing authority for the construction and industrial Statewide general NPDES permits issued by the State Water Resources Control Board, "in most cases, the industrial and construction sites discharge directly into storm drains and/or flood control facilities owned and operated by the Permittees". This finding is then used to impose heightened inspection requirements on the Permittees for industrial and construction sites. However, there is no evidentiary support for this finding and the finding is inconsistent with the monitoring requirements imposed on construction and industrial dischargers under the statewide permits. Further, such stormwater discharges do not constitute illegal discharges or illicit connections. Ultimately, the Regional Board is responsible for enforcement of the two Statewide permits and has no authority to attempt to delegate NPDES responsibilities for facility inspections or enforcement to the Permittees, who lack the expertise, staffing, funding and jurisdictional authority to enforce those permits.*

Response: The federal regulations (40 CFR 122.26 (d)(2)(iv)) require the municipalities to monitor and control pollutants from industrial and construction sites. Some of the industrial and construction sites are also regulated under the State's General Permits. The requirements in the proposed order are not intended to

delegate any of the State's responsibilities under these General Permits. The municipalities must ensure that the industrial and construction sites are in compliance with their local ordinances and regulations. They are not required to enforce the State's General Permits.

6. **Comment: Finding 13**-*Finding 13 provides that "storm water discharges consist of surface runoff from drainage sub-areas with various, often mixed, land uses within all the hydrologic drainage areas that discharge into the water bodies of the U.S." This statement implies that surface runoff is generated by land uses. However, surface runoff is generated by rain or other forms of water release that are inherently not "controllable". This finding should be revised in light of this comment.*

Response: This finding has been revised.

7. **Comment: Finding 15** - *Finding 15 lists a number of pollutants that are not under the control of municipal government. The manufacture, sale and use of pesticides (DDT, Chlordane, Diazinon, Chlorpyrifos) are regulated by the USEPA (under the Federal Insecticide, Fungicide and Rodenticide Act) and California EPA – not the municipalities. Further, the municipalities do not use these pesticides in their activities or operations. Heavy metals (cadmium, chromium, copper, lead, zinc) and petroleum products (oil, grease, petroleum hydrocarbons, polycyclic aromatic hydrocarbons) are primarily associated with the operation of motor vehicles. Motor vehicle registration use, operation, and inspection is regulated under the State Department of Motor Vehicles and automotive design criteria is under the jurisdiction of the USEPA – not the municipalities. Any suggestion that these pollutants can be "controlled" by the municipalities once released to the environment is unrealistic and will not lead to water quality improvement. Finally, the permitted area does not discharge to any bays. Further, only infrequently do discharges from Prado Dam reach the ocean (although it is expected that the large artificial wetland created by Prado Dam provides significant regional treatment of POTW discharges, dairy wastes and urban runoff prior to release to the lower reaches of the Santa Ana River). This finding as presently written is misleading and should be revised to incorporate these clarifications.*

Response: Please see revised language. We disagree with the statement that the municipalities are unable to do anything to control the discharge of these pollutants to storm water runoff. Most of the listed pollutants can be controlled through a variety of means. These include use restrictions, runoff controls, proper application through licensed applicators, proper storage, etc. Some of the pollutants associated with motor vehicle operations can be removed by frequent street sweeping. In short, there are programs and policies that the municipalities can implement to reduce the adverse impact of these pollutants on storm water quality.

8. **Comment: Finding 16**-*Finding 16 states that “pathogens . . . can impact water contact recreation, and non-contact water recreation.” This is not an appropriate impact related to urban runoff in Riverside County. As stated in the 303(d) list, the identified source of pathogens causing impairments in western Riverside County is dairies. In addition, this finding fails to recognize that storm flows in the permitted area naturally exhibit high levels of suspended solids. For example, the Balboa Peninsula was created as a result of storm flows during the 19th century. The finding should be revised in light of these comments.*

- **Response:** Please note that several portions of the Santa Ana River within the permitted area are posted by the County Health indicating that the water is not suitable for body contact recreation due to bacteriological contamination. The sewage treatment plant discharges are all regulated and intensely monitored. On March 23, 2000, pursuant to Water Code Section 13267, the Executive Officer issued an order to the municipalities that discharge storm water to upper Santa Ana River to investigate the sources of bacteriological contamination in the River. This study has not been completed and storm event and non-storm event urban runoff remains a suspect source for the bacteriological contamination in the River.

Also, please note that in many cases the exact cause of impairment was not fully identified prior to listing a waterbody on the 303(d) list and as indicated in the above paragraph, urban runoff remains a strong suspect for some of the impairments.

9. **Comment: Finding 17** - *Finding 17 states that the “water quality assessment conducted by Regional Board staff has identified a number of beneficial use impairments due, in part, to agricultural and urban runoff.” Although the Permittees agree with the portion of the finding related to agricultural runoff, the 303(d) inventory lists the only impairment identified as associated with an urban source in the Permitted Area is sedimentation/siltation in Lake Elsinore. However, it is unclear how even this impairment could be related to urban sources as there is no urban development between Canyon Lake and Lake Elsinore. To the extent the Regional Board has definitive evidence to support this finding as to urban runoff, the Permittees request that evidence should be provided in more detail. Otherwise, this finding should be revised to clearly reflect that the primary sources of water quality impairments in Riverside County are agricultural runoff, dairy wastes and POTW discharges, not urban runoff.*

Response: As indicated in response to Comments 1 and 9, in many cases the exact cause of impairment was not fully identified prior to listing a waterbody on the 303(d) list. Therefore, the listed cause of impairment is not an all inclusive list. Finding 17 is a statement of facts and there is no need to revise it.

10. **Comment: Finding 19** - *Finding 19 incorrectly states that “The urbanized area of Riverside County occupies an area of approximately 1,360 square miles.” Although the total area of western Riverside County in the Santa Ana Region occupies an area of 1,360 square miles, the urbanized area covered by the MS4 Permit only occupies an area of approximately 270 square miles. In other words, the majority of the 1,360*

square miles of western Riverside County in the Santa Ana Region is not urbanized. Further, the majority of the urbanized area is not intensely urbanized as is Los Angeles County or the area of Orange County included in the Santa Ana Region. This finding should be revised to include this information.

Response: Please see revised language.

11. **Comment: Finding 20** - *Finding 20 states that “urban development generally increases impervious surfaces and storm water runoff volume and velocity; and decreases vegetated pervious surfaces available for infiltration of storm water”. While this may be true of other areas, this is not always the case for western Riverside County. Areas that are naturally somewhat barren or have a naturally low infiltration soil type may be replaced with a percentage of turfed and landscaped areas that create a higher net absorption effect after development. While the inclusion of the word “generally” in this finding is a step in the right direction, the finding should be further revised to reflect the actual conditions in western Riverside County. These findings should reflect the climate, geography, vegetation and soil types found in western Riverside County. These conditions result in a naturally high rate of runoff and high sediment loads. To illustrate, the creation of the Balboa Peninsula by the Santa Ana River is attributed to three storm events in the 1800s.*

Suggested Wording provided in a subsequent e-mail dated 5/15/02: Riverside County has residential, commercial and industrial urbanized developments. Depending on soils, relief, climate, precipitation volume and patterns, and other factors, urban development may increase surface areas and storm water runoff volume and velocity; and decreases in vegetated pervious surface available for infiltration of storm water. However, in semi-arid areas, urbanization may result in increases in vegetation and reduction of erosion. Scour, erosion (sheet, rill and/or gully), aggradation (raising of a streambed from sediment deposition), changes in fluvial geomorphology, hydrology, and changes in aquatic ecosystem may result in those instances where increases of volume and velocity occur. In semi-arid regions, development may result in the creation of aquatic ecosystems, and a net increase in absorption.

Response: Please see revised language.

12. **Comment: Finding 28** - *Finding 28 is misleading as it suggests that the County and Cities actively promote development activities. This finding should be revised to reflect that, under the Constitution and State law, the County and Cities cannot prevent the lawful use of private property. In fact, the County and Cities review developments in accordance with State law and ensure that new development is orderly, safe, complies with CEQA and is consistent with the adopted general plan.*

Response: Please see revised language.

13. **Comment: Finding 30** - *Finding 30 provides that the “Permittees have established an Enforcement Compliance Strategy (ECS) for residential, industrial, and commercial facilities and construction sites.” This statement is then used as a basis for justifying*

the Tentative Order's heightened commercial, industrial and construction inspection requirements. However, the finding inappropriately equates "enforcement" with "inspection". As specified in State Water Resources Control Board Order No. 99-08-DWQ State General Construction Permit (Item D.1.a.) and Board Order No. 97-03-DWQ State General Industrial Permit (Item F.1.a.), it is the Regional Board's responsibility to inspect those facilities subject to the State-wide NPDES permits. This Finding is not an appropriate basis for attempting to delegate that responsibility to the Permittees, who in most cases lack the technical expertise to perform the required inspections. Further, NPDES authority cannot be delegated [40 CFR 123.1(g)(1)]. However, the Permittees would like to note that the Regional Board identifies an appropriate frequency of inspection of industrial facilities and construction activities in the Tentative Order. The Permittees expect the Regional Board to conduct their inspections at these specified frequencies to effectively control the quality of stormwater discharges to our MS4 systems from the permitted facilities and activities.

Response: Please see revised language. The requirements in the proposed order are not intended to delegate any of the State's responsibilities under the State's General Permits to the permittees. The municipalities must ensure that the industrial and construction sites are in compliance with their local ordinances and regulations. Also, please refer to our response to Comment 3 above.

14. **Comment: Finding 41 (Formerly Finding 39) -** *Finding 39 provides that this "Order requires the Permittees to review their CEQA and General Plan processes to determine the need for revisions." However, the majority of the projects reviewed by the Permittees do not trigger the CEQA process, and for the projects that do, the existing CEQA checklist adequately addresses the issues. In addition, this finding illustrates that many aspects of the Tentative Order constitute impermissible intrusions into the Permittees land use powers and should be deleted. Further, this finding is misleading in inferring that stormwater pollution problems are the result of urban runoff when, in fact, urban runoff is a minor component of the volume and loading of pollutants to most of the receiving waters.*

Response: The purpose of this provision is to ensure that the Permittees and developers address storm water impact issues early in the project-planning phase so that potential water quality impacts can be minimized.⁴ Further, the requirement to review and revise CEQA processes and General Plan update was a condition in the second term permit that was not challenged by any of the permittees at the time. This requirement will not impede the Permittees' land use powers but require them to utilize those powers to achieve the water quality objectives through incorporation of water quality principles and smart growth planning.

Again, please note that the permit regulates the discharge of pollutants in storm water runoff from the permitted areas. The permittees reports and monitoring data indicate

⁴ Guidance Manual for the Preparation of Part 2 of the NPDES Permit Applications for Discharges from Municipal Separate Storm Sewer Systems, EPA Office of Water (1992), EPA 833-B-92-002.

that the storm water runoff from the permitted area does not always meet water quality objectives. Also, please see response to Comment 2.

15. **Comment: Finding 55** - *Finding 55 states that in “accordance with California Water Code Section 13389, the issuance of waste discharge requirements for this discharge is exempt from those provisions of the California Environmental Quality Act contained in Chapter 3 . . . of the Public Resources Code.” The Permittees disagree with this assertion of this exemption, as more fully explained below.*

Response: Please note that the permit implements the federal Clean Water Act and the State Board has determined that the CEQA exemption contained in Section 13389 is applicable (see State Board Order No. WQ 2000-11).

16. **Comment: The Tentative Order Inappropriately Requires Principal Permittee to “Monitor” Permittee Compliance** *Item I.A.2.i. of the Tentative Order requires the District as Principal Permittee to “Monitor the implementation of the plans and programs required by this Order and determine their effectiveness in attaining water quality standards.” The District has no authority to monitor the Permittees compliance with the Permit. As the permit issuing authority, the Regional Board has the legal authority and responsibility to monitor the Permittees compliance with the Order. However, the District will continue to compile and submit compliance information provided by the Permittees to the Regional Board.*

Response: Please see revised language.

17. **Comment: The Tentative Order Inappropriately Requires the Permittees to Assume the Regional Board’s Enforcement Responsibilities** - *Item I.B.1.c. of the Tentative Order requires the Permittees to “adopt ordinances to set a penalty structure and to authorize them to impose and collect fines administratively”. Such fines would result from violations of the Federal Water Pollution Control Act and regulations implementing this Act. The Permittees have adopted ordinances providing adequate legal authority necessary to establish and maintain adequate legal authority as required by the Federal Storm Water Regulations, 40CFR, Part 122.26(d)(2)(I)(A-F). The California Water Code §13160 expressly designates the State Board as the state water pollution control agency for all purposes stated in the Federal Water Pollution Control Act. Enforcement resulting from violations of the Federal Water Pollution Control Act and regulations implementing this Act are clearly the responsibility of the Regional Board. Delegation of this authority is not authorized under Federal law [40 CFR 123.1(g)(1)]. However, the Permittees will continue to notify the Regional Board of observed violations.*

If the Regional Board assumed that the local jurisdictions have greater access and authority to implement these requirements, they are mistaken. For example, Riverside County does not currently require business licenses. For this reason, the County does not have the access afforded the Regional Board to enforce these Permits.

Response: 40 CFR Section 122.26(d)(1)(ii) require the Permittees to have adequate legal authority to control discharges to the MS4 systems. If the existing authority is not adequate to meet the criteria provided in 40CFR122.26(d)(2)(i), then the Permittees are required to establish additional legal authority. The requirements included in the draft Order are consistent with these federal regulations. The Regional Board has clarified numerous times that the permittees are not being required to enforce the State Board's General Permits.

18. **Comment: The Tentative Order Should Contain a Cost/Benefit Analysis** - *The cornerstone of the National Pollutant Discharge Elimination System is the concept that the discharge of pollutants from municipal storm sewers must be controlled "to the maximum extent practicable". The MEP standard is set forth in Section 402(p) of the Clean Water Act, which requires that NPDES permits shall:*

*Require controls to reduce the discharge of pollutants to the **maximum extent practicable**, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.*

(33 U.S.C. § 1342(p).)(Emphasis added.) Almost by definition, the MEP standard requires a weighing of the costs and the benefits of any program to enhance water quality. (See, e.g., 64 Fed. Reg. 68722, 68754 (Dec. 8, 1999); Clean Water Initiative, p. 119; Board Order WQ 2000-11, p. 10.)

In addition, State law requires that the Regional Board consider the costs and the benefits associated with the development of Basin Plans. Pursuant to Water Code Section 13263(a), the Regional Board must consider all of the factors set forth in Water Code Section 13241 when issuing an MS4 permit. Water Code Section 13241 only authorizes the Regional Board to require water quality conditions "that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area." As part of its analysis, the Regional Board must take into account "economic considerations". (Water Code § 13241(d). Therefore, responsible public process calls for consideration of cost/benefits (supported by analysis and quantified costs) for permit requirements which implement Basin Plans. This is particularly critical in the Riverside County MS4 Tentative Permit where numerous new requirements appear that potentially pose significant expense to municipal budgets with no identified funding sources.

64 Fed Reg. 68722 & 68723 requires flexible interpretation of the Maximum Extent Practicable concept based on site-specific characteristics and "cost considerations as well as water quality effects ..." Thus, the Regional Board is also advised in the Federal Regulations to consider costs as a factor in determining the reasonableness and practicality of permit requirements.

Under both Federal and State law, therefore, the Regional Board must consider the costs and the benefits of the Tentative Order. More fundamentally, the public demands consideration of economic factors in the establishment of all public policy, including public health and safety, education, homeland security and defense. There is nothing to justify not considering economic factors in establishing requirements for public management of stormwater quality. However, nothing in the Tentative Order or related documents indicates that such an analysis has taken place. The Permittees are very concerned about the costs associated with implementing the program set forth in the Tentative Order, and would like to see a weighing of these costs with the benefits to be derived from some of the components of the program, especially those components such as the construction and industrial inspections that are currently being conducted by other entities, including the Regional Board.

Response: This is the third term MS4 permit for the permittees. The first two term permits included similar provisions as required under the federal laws and regulations. The MS4 permits generally do not have numeric limits; the permittees are required to reduce the discharge of pollutants to the MEP. The permit specifies that increasingly more effective BMPs must be developed and implemented if water quality standards are being violated. Unlike most other point source NPDES permit requirements, a large amount of capital investment is not anticipated for structural treatment control systems to comply with the storm water MS4 permits.

While cost is a factor, the Regional Board is not required to perform a cost-benefit analysis in adopting the MS4 permits⁵. Section 13241 of the Water code applies to the development of water quality objectives (a basin planning process). This section of the Water Code includes a list of factors⁶ that are to be considered by a regional board in establishing water quality objectives. The Regional Board established the water quality objectives in compliance with Section 13241 during the basin planning process. The proposed MS4 permit implements the water quality objectives in the Basin Plan. While regional boards are required to consider economic factors in the development of basin plans (W.C. 13241), regional boards are not specifically required to undertake formal cost/benefit analysis during the issuance of MS4 permits. Federal regulations do not compel reliance on any particular form of economic analysis in the implementation of requirements based on the MEP performance standard. The citation from 64 Fed. Reg. 68722 & 68732 calls for flexible interpretation of MEP based on site-specific characteristics and "cost considerations as well as water quality effects...." In developing the first and the second drafts of the MS4 permit, Board staff met with the permittees several times and considered the information provided by the permittees in terms of cost of programs and policies required under the MS4 permit and the water quality benefit from these programs and policies. Thus, while the regional board is advised to consider costs as a factor in determining the reasonableness or practicability of requirements, there is no state or federal mandate for a more formal economic

⁵ State Board Order No. WQ 2000-11 at p.20.

⁶ California Water Code Section 13241.

analysis involving the development of cost/benefit or cost-effectiveness relationships.

Also see the revisions based on additional information provided by the permittees.

19. **Comment: The Tentative Order's Requirements to Inspect Sanitary Sewer Systems are Inappropriate** - *Item V.F.5. of the Tentative Order requires the Permittees to inspect "existing devices designed to separate grease from wastewater (e.g., grease traps or interceptors) to ensure adequate capacity and proper maintenance." The Permittees object to this proposed requirement as these devices are an element of the sanitary sewer system and municipalities lack the technical expertise to conduct these inspections (with the exception of the Cities of Riverside and Corona, which operate pre-treatment programs). No evidence is provided to justify this requirement; however, if these inspections can be justified in the permitted area, the Permittees request that the Regional Board reopen the POTW permits to include this requirement or adopt a separate permit to require operators of sanitary sewer systems to perform these inspections.*

Response: The item referred to in the above comment regarding inspection of grease traps or interceptors has been deleted. We agree that this is more appropriately addressed through the POTW pre-treatment program. The requirements on restaurant inspection have been moved to Section IX.C.3.

20. **Comment: The Tentative Order's Requirements for Reporting Spills and Developing Reporting Programs are in Contradiction to the California Water Code** - *Item VI.B. assigns responsibility for reporting of discharges that may endanger human health or the environment in contradiction to the requirements of the California Water Code. Sections 13193, 13271 and 13272 of the California Water Code requires that persons responsible for the spills are required to report to the Office of Emergency Services. This responsibility cannot be assigned to the Permittees in contradiction to State law except to the extent that the Permittees are responsible for the spills. In addition, Item VI.B. requires the Permittees to propose a reporting program for approval by the Executive officer. This requirement is also in contradiction to Section 13193 of the California Water Code which requires the State Board, when the legislature has appropriated sufficient funds in consultation with Regional Boards, the State Department of Health Services, and local agencies to prepare standardized reporting forms to be used by operators. This item should be deleted from the Tentative Order. Nevertheless, the Permittees will continue to report illegal and illicit discharges as observed to the Regional Board.*

Response: Please note that Section 13193 of the California Water Code deals with sanitary sewer overflow reporting requirements, 13271 deals with hazardous waste and sewage and 13272 deals with oil and petroleum products. The proposed language in the draft permit neither supersedes the requirements specified in Sections 13193, 13271 and 13272 nor contradicts these reporting requirements. Most permittees are currently notifying the Regional Board all illegal and illicit discharges and spills and leaks into their MS4 systems. The permit requirement to

continue this practice is mostly to coordinate cleanup activities and to facilitate any enforcement actions.

21. Comment: The Tentative Order's Inspection Components are Inappropriate -

The Permittees are concerned about the portions of the Tentative Order that require the Permittees to regulate, inspect and control discharges from industrial, commercial and construction sites. This attempt to delegate responsibility from the State and Regional Board to local entities is inconsistent with the California Water Code and the Clean Water Act and constitutes an unfunded State mandate.

*Sections IX.A, IX.B and IX.C of the Tentative Order require the Permittees to develop inventories of construction, industrial and commercial sites and to inspect them on a regular basis. In addition, the Tentative Order proposes to require the Permittees to train staff to conduct these inspections. Requirements for inspection of industrial facilities are specified in 40 C.F.R. 122.26(d)(iv)(C). Only storm water discharges to MS4 systems from specified industrial facilities "and industrial facilities that the **municipal permit applicant** determines are contributing a substantial pollutant loading to the municipal storm sewer system" (emphasis added) are required to be inspected – not the facilities themselves. The specified industrial facilities are those currently permitted under the State General Industrial Permit and establishment of a duplicative facility inspection program is not only not required by the regulations, but such a requirement would be unnecessary and burdensome of municipalities and the permitted industrial facilities. Further, in compliance with the existing MS4 Permit requirements, the Permittees effectively eliminate discharges from all facilities and activities that would "contribute substantial pollutant loading to the MS4 system". In other words, the Federal stormwater program provides for a complementary program whereby industrial and construction facilities and activities are permitted and regulated under NPDES and municipalities control illicit connections and illegal discharges to their MS4s under ordinance. Finally, there are no requirements in the Federal regulations for inspection of commercial facilities, including restaurants nor are there any requirements for establishment or maintenance of databases. Further, there is no justification for requiring the establishment of such programs in western Riverside County nor anticipated water quality benefits that would result.*

This raises a serious question regarding whether the Permittees have the expertise to conduct the required inspections without hiring new staff or incurring significant staff training costs. This concern holds true for other aspects of the Tentative Order as well. For example, Section V.F.5 of the Tentative Order requires the Permittees to develop a restaurant inspection program that includes inspections of oil and grease disposal. This is not a requirement of the Federal regulations and, with the exception of Riverside and Corona, is this a function that the Permittees are qualified to perform?

In addition, these requirements constitute a specific attempt to delegate obligations that the law imposes on the State and Regional Board to the Permittees. For example, facilities and activities regulated under the State's General Industrial Permit or the State General Construction Permit must be inspected by the Regional Board.

Under the Tentative Order, however, the Regional Board attempts to effectively shift these inspection requirements to the Permittees. This is inconsistent with the law and represents an unfunded State mandate in violation of Article XIII B, Section 6 of the California Constitution. Further, the Federal stormwater regulations clearly identify those industrial and construction activities that are potentially significant sources of stormwater pollutants for regulation. In not requiring construction activities disturbing areas less than one acre, industrial facilities not listed for regulation under the General Industrial Permit Program, and commercial activities, the Federal program recognizes that these are not significant sources of stormwater pollutants warranting special regulation or inspection. Further, nothing provided by the Regional Board or submitted by the Permittees in their Annual Reports or ROWD suggests that these are significant sources of pollutants impacting receiving waters in western Riverside County. The Permittees have implemented a Compliance Assistance Program (CAP) and have sufficient code compliance procedures in place that effectively and appropriately address these potential sources of stormwater pollutants. Therefore, the Permittees request that deletion of the inspection and associated database creation and maintenance requirements from the Tentative Order.

The Tentative Permit Sections IX.A.7 and IX.C. 10 require that

“The permittees need not inspect facilities already inspected by Regional Board staff if the inspection was conducted within the specified time period.”

Permittee inspections should not be conditioned on the Regional Board capability to meet its permit inspection duties. The Regional Board is charged with the responsibility and is funded to implement and enforce the General Permits for Industrial Activities, including Construction. This involves review of the Annual Reports and runoff monitoring information (for industrial sites), and conducting inspections as necessary to confirm permit compliance. The reports and monitoring data are sent to and are reviewed by Regional Board staff. Regional Board staff should conduct permit compliance inspections to properly carry out this responsibility. If additional resources are needed to more fully implement this program, the State Water Resources Control Board should forward a budget request to the legislature.

Additionally, an onsite presence and permit enforcement (when warranted) by the Regional Board would strengthen program creditability in the public view. This would also leverage the effectiveness of the overall stormwater program. Municipal inspections by permittees would be most efficiently focused on activities not already permitted under a fee based State program.

By the Regional Board assuming responsibility for enforcement of the General Permits and inspections of sites under the General Permit, businesses under those permits will also be spared paying two fees for both State and local inspectors conducting stormwater related inspections.

The Permittees would like to note that the Regional Board identifies an appropriate frequency of inspection of industrial facilities and construction activities in the

Tentative Order. The Permittees expect the Regional Board to conduct their inspections of these facilities and activities at these specified frequencies to effectively control the quality of stormwater discharges to our MS4 systems from the permitted facilities and activities. To the extent that the Regional Board is not conducting inspections at these frequencies, it is not meeting its obligations under NPDES.

Response: The proposed MS4 permit does not purport to implement state law, but rather implements federal law as provided in the Clean Water Act and the municipal storm water regulations promulgated thereunder. Therefore, the requirements specified in the permit does not constitute an unfunded State mandate. This argument has been made repeatedly and has been uniformly rejected by the State Board. The State Board held that the constitutional provisions cited in the comment above have no application to the adoption of NPDES permits. The SWRCB cited San Diego Unified Port District, Order No. 90-3 for the proposition that the constitutional mandate requirements do not apply to NPDES permits issued by Regional Board, in that the NPDES permit program is a federally-mandated program, rather than state-mandated. (Id, at page 14.) The Regional Board's issuance of the MS4 permit does not require that the State provide funding for its implementation.

The Regional Board has indicated at numerous occasions that it has no intention to delegate any of its responsibilities under the State's General Permits to the Permittees. 40 CFR Section 122.26(d)(1)(ii) requires the Permittees to have adequate legal authority to control discharges to the MS4 systems. If the existing authority is not adequate to meet the criteria provided in 40 CFR Section 122.26(d)(2)(i), then the Permittees are required to establish additional legal authority. Federal regulations also require the permittees to "Carry out all inspection, surveillance, and monitoring procedures necessary to determine compliance and noncompliance with permit conditions including the prohibition on illicit discharges to the municipal separate storm sewer"⁷. 40 CFR 122.26(d)(iv), the Permittees are required to develop a management program (municipal storm water management program, MSWMP) that addresses pollutant control measures for commercial, residential,⁸ and industrial facilities.⁹

The requirements in the Order do not delegate any of the functions of the Regional Board to the permittees and they are consistent with the federal regulations. The Regional Board does not intend to reduce its inspection efforts at facilities under the General Permits. We expect that additional field presence provided by the permittees' inspection and enforcement of its ordinances would benefit water quality and encourage behavior modification. However, to avoid duplicative efforts, some flexibility is provided to the permittees in the inspection frequency for facilities already inspected by Regional Board staff.

⁷ 40CFR122.26(d)(2)(i)(F)

⁸ 40 CFR 122.26(d)(iv)(A)

⁹ 40 CFR 122.26(d)(iv)(C)

The inspection frequencies have been revised based on discussions with the permittees.

22. The Tentative Order's Time Implementation Provisions Should Be Revised As described in the letter provided by the Principal Permittee, the compliance schedules for program development and implementation proposed in the Tentative Order are arbitrary and unrealistic and do not recognize the practical and procedural logistics faced by municipalities.

The requirements proposed in the Tentative Order can be categorized as Program Reviews, Programs and Work Products. The Tentative Order proposes the following schedule:

- 22 Program Reviews to be completed within the first 6 to 18 months
- 36 Programs to be revised or developed within the first 12 to 18 months
- 20 Work Products (databases, reports, BMP Manuals, survey) that need to be completed within the first 6 to 12 months

Some of these development areas build on each other, requiring an extended amount of time to complete the task.

The Permittees propose a more orderly schedule that would provide for implementation of the proposed requirements in three phases:

- Phase I – Existing Program reviews – months 0 to 18
- Phase II – Program Modification and Development – months 18 to 42
- Phase III – Reporting – months 36 to 42

As described in the ROWD, the Permittees intend to review and revise the current programs in the revised DAMP. The phasing approach to overall program development will allow for a more fiscally responsible and complete program.

The following examples provided by the City of Corona illustrate the practical and procedural logistics that would be faced in developing and implementing the Inspection/Enforcement programs and in developing and adopting the ordinance proposed in the Tentative Order for enforcement and legal authority. These estimates were developed by staff experienced in these municipal procedures and are intended to illustrate the efforts and scheduling needs to meet these and other requirements proposed in the Tentative Order.

Inspection/Enforcement Program Development and Implementation

Step 1 – Inter-departmental meetings to review the MS4 Permit requirement and to identify existing and required resources. (Two months)

Step 2 – Multi-agency meetings to identify existing available inspection capabilities (i.e., County Health, etc.). (Three months)

Step 3 – Based on the findings of Steps 1 and 2, determine additional staffing needs and costs. (One month)

Step 4 – Present the options and associated costs to Council Committees. (Two months)

Step 5 – Finalize the recommended staffing/resources in consultation with the affected departments and agencies. (One month)

Step 6 – Present the inspection/enforcement strategy to the affected stakeholders. (Two months)

Step 7 – Report the outcome of the findings to the City Council Committees. (Two months)

At completion of Step 7 Ordinance development and adoption can be initiated (see below)

Step 8 - Prepare the budget modifications. (One month)

Step 9 - Present the budget and additional personnel needs to the Council. (Two months)

Step 10 - Develop the inspection forms and required training manuals.

Step 11 - Staff Training.

Ordinance Development and Adoption

Step 1 – It is important that such an ordinance be consistent Countywide as is the existing stormwater ordinance. Before an ordinance can be developed, an inspection and enforcement strategy identifying responsibilities for divisions/agencies and identifying an appropriate schedule for administrative penalties must be developed. (Four months)

Step 2 – Existing ordinances will need to be reviewed and a draft ordinance or revision to an existing ordinance will need to be drafted. This will need to be reviewed by County Counsel and the respective city attorneys. (Four months)

Step 3 – Once consensus is obtained between the Permittee attorneys, the draft ordinance must be presented to the Board of Supervisors and the respective City Council for review. (Two months)

Step 4 – The draft ordinance must then be presented to the full Board of Supervisors and City Councils. This procedural step requires a first and second reading and requires one month for ordinance adoption.

Step 5 – The ordinance is in effect 30 days following adoption.

Response: Many of the above stated requirements, including review of ordinances, are not new requirements. Consistent with 40 CFR 122.26(d)(2)(i), the previous versions of the permit required the permittees to establish adequate legal authority. However, some of the permittees may not have established adequate legal authority during the last twelve years. The third term permit clarifies some of the requirements for “adequate legal authority” and requires the permittees to fully comply with the federal regulations, which has been in effect since 1990. Federal NPDES regulation 40 CFR 122.26(d)(2)(i)(A) provides that each permittee must demonstrate that it can control “through ordinance, permit, contract, order or similar means, the contribution of pollutants to the municipal storm sewer by storm water discharges associated with industrial activity and the quality of storm water discharged from site of industrial activity.” These ordinances must be applied at all industrial sites to ensure that pollutant discharges to the MS4 are reduced to the maximum extent practicable and permit requirements are met. 40 CFR 122.26(d)(2)(iv)(C)(1) requires that municipalities “identify priorities and procedures for inspections and establishing and implementing control measures...” for discharges from industrial sites that the municipality determines are contributing a substantial pollutant load to the MS4. Regarding enforcement at industrial sites, the US EPA further states, “The municipality, as a permittee, is responsible for compliance with its permit and must have authority to implement the conditions in its permit. To comply with its permit, a municipality must have the authority to hold dischargers accountable for their contributions to separate storm sewers” (1992).

The requirements in the proposed MS4 permit are consistent with the federal regulations. The revisions in the second draft of the permit recognizes the programs and policies the permittees have already implemented.

23. **Comment: The Tentative Order Should Include a Safe Harbor Provision -** *As the State Board has recognized, “strict compliance” with water quality standards are not generally appropriate. (Board Order WQ 2001-15). Rather than requiring “strict compliance,” an iterative approach is used to obtain compliance over time. (Id.) Consistent with this iterative approach, Section III.E of the Tentative Order outlines a process by which BMPs are modified over time in an attempt to obtain full compliance with water quality objectives. However, the Tentative Order fails to include a “safe harbor” provision in this Section or in Section XV.A.11. This is inconsistent with the iterative BMP approach, and exposes the Permittees to unwarranted threats of third-party lawsuits, even when the Permittees are attempting to comply with the permit through the iterative BMP process. (See e.g., 33 U.S.C. §§ 1251 et seq.) To correct this problem, the Permittees request that the Regional Board include a “safe harbor” provision in the MS4 Permit similar to the provision recently approved by the State Board in Section F.3 of the Statewide General NPDES Permit for Discharges of Aquatic Pesticides to Waters of the United States, General Permit No. CAG990003. Such a provision is consistent with the iterative BMP approach called for by the State Board and the MEP standard of the Clean Water Act.*

Response: The comment suggests the addition of specific “Safe Harbor” provisions found in Section F.3 of the Statewide General NPDES Permit for Discharges of Aquatic Pesticides to Waters of the United States, General Permit No., CAG990003. The language in the General Permit referenced is similar to the language in the 1996 Riverside County MS4 (RC MS4) permit. It is also similar to the 1990 and 1996 Los Angeles MS4 permits that have been revised (renewed)¹⁰ and the revised permit contains language similar to the language in the draft RC MS4 permit. State Board Order WQO No. 98-01 also contained similar language. However, WQO No. 98-01 has been subsequently amended by State Board Order NO. WQ 99-05. The language included in the RC MS4 permit is consistent with the renewed Los Angeles permit and the amended State Board order.

The Porter-Cologne Act requires waste discharge requirements to “implement relevant water quality control plans”¹¹ The water quality control plan identifies the beneficial uses to be protected and specifies the “water quality objectives reasonably required” to protect those uses, along with “the need to prevent nuisance”¹² The receiving water language included in the draft RC MS4 permit requires the permittees to comply with the water quality standards. These are not arbitrary standards; water quality standards include the water quality objectives and the beneficial uses specified in the Basin Plan. The discharges regulated by the Regional Board must meet water quality standards. The Discharge Prohibitions and the Receiving Water Limitations are necessary to meet the water quality standards.

The comment contends that by failing to include a “Safe Harbor” provision in the Receiving Water Limitations section in Part III or Section XV, Provisions, of the Permit, the Regional Board has failed to provide any assurances to Petitioners that once they have implemented the storm water management programs set forth in the Permit in a timely and complete manner, they will be deemed to be in compliance with the Receiving Water Limitations provisions. The comment alleges that this lack of protection may potentially expose the permittees to unwarranted third party suits.

The Receiving Water Limitations are consistent with the state and federal regulations and the precedential State Board orders¹³. An iterative process, which requires increasingly more effective BMPs, is needed for the permittees to come into full compliance with the Receiving Water Limitations.¹⁴ The process is structured to allow dischargers the flexibility to try low-cost BMPs and to evaluate the effectiveness of those BMPs. The dischargers have the opportunity and flexibility to propose additional and/or different BMPs. Should the permittees fail to act on identifying exceedances of water quality standards and implementing appropriate BMPs, the Regional Board would direct the permittees to modify their BMPs. A violation occurs

¹⁰ LARWQCB Order NO. 01-182

¹¹ Water Code § 13263, subdivision (a)

¹² *Ibid.* and *id.*, § 13241.

¹³ State Board orders WQ 99-05 and WQ 2001-15

¹⁴ Order R8-2002-0011, Section III, page 21

when the discharger fails to implement any of the BMPs or other revisions approved by the Regional Board. Timely implementation of BMPs and other control measures to reduce the discharge of pollutants consistent with this approach will satisfy the permit terms and this provides the "Safe Harbor" that the petitioners are seeking.

24. **Comment: The Regional Board Must Comply with CEQA** - *Finding 55 of the Tentative Order asserts that the Regional Board is exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to Water Code Section 13389. However, Water Code Section 13389 only applies to actions which are required under the Clean Water Act. (See Water Code § 13372.) As Committee for a Progressive Gilroy v. State Water Resources Control Board (1987) 192 Cal.App.3d 847, 862 makes clear the exemption contained in Water Code section 13389 is a limited exemption and does not insulate discretionary acts of the Regional Board from the requirements of CEQA. The Tentative Order goes beyond the requirements of the Clean Water Act and imposes requirements, which are discretionary, not mandatory. Therefore, adoption of the Tentative Order should only occur after the appropriate CEQA review has been performed.*

Given the breadth of the Tentative Order and its potential impacts on the environment, there is good reason for the Regional Board to conduct the appropriate review under CEQA. For example, Section XV.A.6 of the Tentative Order recognizes that certain BMPs which are "implemented or required by the Permittees for urban runoff management may create a habitat for vectors (e.g., mosquitoes and rodents) if not properly designed or maintained". The environmental implications of this threat, along with the impacts the possible responses to this threat may also have on the environment, is just one example of the types of issues which must be studied by the Regional Board.

The need for the Regional Board to comply with CEQA is particularly true in light of the components of the Tentative Order, which require the Permittees to conduct heightened CEQA review of projects. For example, Sections VIII. 8.a-f require the Permittees to review their CEQA documents to ensure that stormwater-related issues are properly considered and appraised, and, if necessary, requires the revision of CEQA documents. This section goes on to mandate that certain specific items be considered for development projects. The Regional Board does not have the authority to revise the CEQA checklist or make it applicable to projects not otherwise subject to CEQA. In addition, it is the Regional Board and not the Permittees who should consider the environmental impacts created by the Tentative Order.

RESPONSE: The issuance of the MS4 permit in its entirety is exempt from the documentary requirements of CEQA pursuant to Water Code Section 13389. Contrary to the comment, the provisions of the Order do not go beyond the requirements of the Clean Water Act. Accordingly, as the State Board recently concluded, CEQA does not apply in the manner asserted. Please see SWRCB Order WQ 2000-11.

25. **Comment: The Tentative Order Confuses Storm Drains and POTWs** - *Sanitary sewers are part of publicly owned treatment works ("POTWs") (33 U.S.C. § 1292(2)(A)). The duty to monitor, inspect and respond to sanitary sewer overflows rests with the operator of the POTW, not with those Permittees who do not operate a POTW. Therefore, the Permittees request that the Regional Board delete the provisions of the Tentative Order which impose*

monitoring, inspection and enforcement requirements regarding the POTWs on the Permittees who do not operate those POTWs.

Response: The Regional Board will consider issuing General Waste Discharge Requirements for the sewage collection agencies within San Bernardino and Riverside County to address sanitary system overflows similar to the General Waste Discharge Requirements for the Orange County area sewage collection agencies. However, for now the permittees are requested to coordinate responding to sewage spills with the local sewerage agencies. A coordinated effort is needed to cleanup any sewage spill that enters an MS4 system. A POTW may lack the authority to access and cleanup an MS4 system. The permittees are not required to monitor and inspect systems owned and operated by the POTWs.

26. **Comment: The Tentative Order's Definition of Redevelopment is too Broad -** *Section VIII.B.1.A of the Tentative Order defines "significant re-development projects" as the "addition or creation of 5,000 or more square feet of impervious surface on an already developed site". This definition of "redevelopment" is inconsistent with the controlling EPA definition of the term. EPA intends the term "redevelopment":*

To refer to alterations of a property that change the "footprint" of a site or building in such a way that results in disturbance of equal to or greater than 1 acre of land. The term is not intended to include such activities as exterior remodeling, which would not be expected to cause adverse stormwater quality impacts and offer no new opportunity for stormwater controls. (64 Fed.Reg. 68760, December 8, 1999.)

The Permittees request that the definition of "redevelopment" found in the Tentative Order be deleted and asks that the Regional Board use the controlling EPA definition.

Response: The current language in the permit is consistent with the Chief Counsel's December 26, 2000 letter to the Regional Board Executive Officers that explained State Board Order WQ 2000-11. Item 2 of this letter states, in part, "Redevelopment projects that are within one of these categories are included if the redevelopment adds or creates at least 5,000 square feet of impervious surface to the original developments".

27. **Comment: The Tentative Order Imposes Unfunded State Mandates -** *Article XIII B, Section 6 of the California Constitution requires the State to reimburse local governments for the costs associated with a new program or higher level of service mandated by the Legislature or any State agency. The one exception is for "mandates of . . . the Federal government which, without discretion, require an expenditure for additional services or which unavoidably make the providing of existing services more costly". (Cal.Const. art. XIII B, § 9(b); Sacramento v. California (1984) 50 Cal.3d 51.) However, this exception applies only where "the State had no 'true choice' in the manner of implementation." (Hayes v. Commission on State Mandates (1992) 11 Cal.App.4th 1564, 1593-94.)*

As discussed above, the Tentative Order goes beyond what is required by the Clean Water Act. Thus, to the extent the Regional Board chooses to exercise its discretion to impose such requirements on the Permittees, it must comply with the prohibition against unfunded mandates set forth in the California Constitution.

Response: The comment asserts that the draft permit imposes requirements beyond the federal mandate and therefore is in violation of the State Constitution prohibiting unfunded mandates. The comment references the Order's requirements for inspections of facilities subject to state General permits; response to SSOs; and definition of redevelopment as provisions not required under the Clean Water Act.

The comment cites *Hayes v. Commission on State Mandates*, 11 Cal. App 4th 1564, 1593 (1992) for the proposition that the prohibition on unfunded mandates applies, unless the State has “**no true choice**” in the manner of implementing the federal program. The analysis of this issue is incorrect and misleading. The commentor omitted the most important sections of the implementing language and omitted key portions of the case cited. The California Constitution, Article XIII.B, Section 6 states:

“Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service...(Cal. Const. Art. XIII.B, Section 6). “

Government Code Sections 17500 through 17630 were enacted to implement Article XIII.B, Section 6.

This section was not intended to cover a PERMIT OR ORDER OR REQUIREMENTS THEREIN issued by a regulatory agency of state government imposing federal requirements upon parties prohibited from discharging pollutants into the waters of the State and the United States under both state and federal law. If commentor's analysis were correct, every NPDES permittee could file a “Claim” for reimbursement to comply with regulatory requirements, claiming that they require a “new program” or an “increased level of service.” The Constitution addresses reimbursement for additional “services” mandated by the State upon local agencies, not regulatory requirements imposed upon all permittees, including cities and the counties. The intent of the constitutional section was not to require reimbursement for expenses incurred by local agencies complying with laws that apply to all state residents and entities. (See *City of Sacramento v. State of California*, 50 Cal.3d. 51 (1990) citing *County of Los Angeles v. State of California*, 43 Cal.3d.46.

Further, all provisions contained in the MS4 permit implement applicable federal statutes and regulations to protect quality of waters of the United States. These provisions are consistent with the federal regulations and USEPA's guidance. The State Board found that the Los Angeles SUSMP provisions, including the numeric sizing criteria, are consistent with the MEP standards specified in the federal laws and

regulations.^{15, 16, 17} The inspection requirements, and the response to SSOs are as per federal regulations.¹⁸ The requirements for development and redevelopment controls were also addressed by the State Board in its WQ Order No. 2000-11.

The State Board found that the constitutional provisions regarding state mandates do not apply to federally mandated NPDES permits.¹⁹ The case cited by the Commenter is not applicable to this situation.²⁰ The draft permit implements the Clean Water Act and its implementing regulations and therefore the “unfunded mandate” provision does not apply to this NPDES permit.

28. Comment: The Tentative Order Infringes on the Permittee’s Land Use Authority

- In California, land use planning and zoning lies in the hands of local governments, and local governments have wide discretion to both determine the content of their land use plans and to choose how to implement those plans. (Yost v. Thomas (1984) 36 Cal.3d 561, 565.) In the Clean Water Act, Congress recognized that land use was a local matter, stating that: It is the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of States . . . to plan the development and use (including restoration, preservation, and enhancement) of land and water resources . . . (33 U.S.C. § 1251(b))

Despite this clear Federal and State policy, the Tentative Order infringes upon the power of local governments to determine the content of their land use plans and to choose how to implement those plans. For example, the Tentative Order infringes upon the Permittees’ rights with respect to their general plans, their development project approval processes, and their environmental review processes. By infringing on the power of local governments to control local land use decisions, the Tentative Order goes beyond the Regional Board’s authority.

Response: Commenter alleges that the draft Permit violates provisions of the CWA and California law as it infringes on local government’s land use powers and authority. Commenter cites the draft permit requirements to review general plans, development project approval processes, and their environmental review processes.

The permittees have land use powers and authority. Utilizing their land use authority, the permittees authorize urban development that adds pollutants to urban runoff.

¹⁵ SWRCB, 2000 Memorandum on State Water Board Order WQ 2000-11, SUSMP page 1

¹⁶ 40 CFR Section 122.26(d)(2)(iv)(B)(7)

¹⁷ 40 C.F.R. Section 122.26(d)(2)(iv)(B)(4)

¹⁸ See 40 CFR 122.26(d)(2)(i)(F)

¹⁹ SWRCB, 1990 Order No. 90-3

²⁰ Hayes v. Commission on State Mandates, (1992) 11 Cal.App.4th 1564 addressed the exception set forth in Gov. Code Section 17556©. This case involved a decade long battle over claims by two county superintendents of schools for reimbursement for mandated special education programs. The court stated that the “costs mandated by the federal government are exempt from an agency’s taxing and spending limits,” and therefore exempt from reimbursement

During each phase of urban development, the permittees must consider the impact of the development on the environment. By considering appropriate pollutant controls and incorporating those control measures during the planning stages of the project, it is possible to control pollutants in urban runoff in a cost-effective manner. The draft permit lists a number of items that could be considered by the permittees during the planning stages of a project for a cost effective pollutant control program²¹. If these factors are not considered at the planning stages and if the site becomes a source of pollutants in urban runoff, after-the-fact control measures may not be cost effective. However, a consideration of these factors during the planning process in no way infringes upon the local governments' land use powers and authority. The permit requires the permittees to consider watershed protection principles and policies during the planning stages of a project and to incorporate appropriate principles and policies into their General Plan or related documents. This requirement does not reduce the powers and authorities of the local government in land use planning.

The commenter also indicated that neither the CWA nor EPA regulations intended to impose any restrictions on local land use authority. We have no disagreement with this argument. However, the commenter fails to recognize the fact that the EPA did envision the municipal storm water program to address pollutants during all stages of urban development, including the planning process. EPA regulations require that MS4 Permittees implement planning procedures including a comprehensive master plan to control after construction is completed, the discharge of storm water from municipal separate storm sewer systems which receive discharges from development and significant redevelopment.²²

EPA Guidelines further note that MS4 Permittees may accomplish this requirement by

Incorporation of land use goals and objectives into a plan document or map plan. Comprehensive or master plans are often non-binding. They provide support and direction to local officials that have the authority to make land use decisions.²³

Furthermore, similar requirements for General Plan update were included in the second-term (1996) MS4 permit for the permittees.²⁴ None of the permittees challenged this provision in 1996.

Finally, the December 26, 2000 memo from the Chief Counsel of the State Board indicated that the SUSMP provisions must be considered as MEP, should be a part of all MS4 permits, and the State Board Order (WQ 2000-11) should be considered as precedential.

²¹ Order NO. R8-2002-0011, Part VIII.A.8 a to f and A.9 a to g.

²² 55 Federal Register 47990, 48054

²³ Guidance for the Preparation of Part 2 of the NPDES Permit Applications for Discharges from Municipal Separate Sewer Systems, EPA Office of Water (1992), EPA 833-B-92-002.

²⁴ Regional Board Order No. 96-30, Section V.22, page 21 of 29

The requirements in question do not infringe on local land use authority, are consistent with the federal regulations and guidelines, and with the precedential orders adopted by the State Board, and are in compliance with the directives from the Chief Counsel.

29. **Comment:** **Section IX. Municipal Inspection Program** - *The Tentative Order proposes to require the Permittees to develop several databases to identify information about construction projects, industrial and commercial facilities. The Permittees request clarification on the databases as follows:*

- *Due to the major cost of developing these databases, the Permittees request additional information on how this information will be used.*
- *The Construction database is to include “an inventory of construction sites within its jurisdiction for which building or grading permits are issued and activities at the site include: soil movement; uncovered storage of materials or waste, such as dirt, sand or fertilizer; or exterior mixing of cementaceous products, such as concrete, mortar, or stucco”. This requirement is overly broad as each Permittee issues many permits that result in soil movement and can range from the mass grading of a site to the installation of a pole sign. Although this extensive requirement would be expensive to develop and maintain, it would not be useful to the Permittees in managing construction-related stormwater quality. As such, it would not result in a water quality benefit. Table 4 below summarizes the building and grading permits issued during the 2001 calendar year that meet the requirements stated above.*

Building & Grading Permit Summary, Calendar Year 2001

Table 4

Agency	Sewer Connections	Swimming Pools	Building Cost Range			Public Works	Grading
			>\$2M	\$100K to \$2M	<\$100K		
Beaumont							
Calimesa	5			9	116	20	2
Canyon Lake							
Corona	7	483	9	447	3950	227	95
Hemet						151	16
Lake Elsinore		47		307	716	120	100
Moreno Valley		110		315	1025	400	73
Norco	238	75	1	153	41	1102	19
Perris							
Riverside County		1010	7	29	6423		900

Agency	Sewer Connections	Swimming Pools	Building Cost Range			Public Works	Grading
			>\$2M	\$100K to \$2M	<\$100K		
Riverside City	179	325	8	1369	2146	237	170
San Jacinto							
Murrieta							
Total	429	2021	25	2629	14417	2130	1380

The categories noted above are typical project types for which building or grading permits are issued. The Sewer category is for connections to the sanitary sewer. The Building greater than \$2,000,000 category represents large building projects such as warehouse projects, industrial buildings or office buildings. The Building \$100,000 to \$2,000,000 category represents moderate sized projects including single-family homes or small office buildings and industrial plants. The Building less than \$100,000 category represents small projects including pole signs, patios, garages, fences and walls, and constitutes the vast majority of projects permitted by the Permittees. Public Works Permits are issued for a wide variety of activities within the public street or on public property ranging from the installation of a new driveway approach to the installation of a new sewer or storm drain line. The Grading category covers all projects from stockpiles of 50 cubic yards of soil to mass-grading for a new housing tract.

The USEPA determined that the minimum construction project worthy of regulation under Phase I are those that disturb five acres or more of land. This limit will drop on March 9, 2003 to one-acre when the Phase II NPDES program becomes effective. These projects should be adequately addressed in the database maintained by the State Water Resources Control Board. The Permittees object to the proposed requirements to establish a more extensive database without a clear justification of a need and demonstration of an expected benefit commensurate with the resources needed to implement this requirement.

The Tentative Order proposes that the "inspectors responsible for ensuring compliance at construction sites shall be trained in and have an understanding of Federal, State and local water quality laws and regulations as they apply to construction and grading activities; the potential effects of construction and urbanization on water quality; and implementation and maintenance of erosion control BMP's and sediment control BMP's and the applicable use of both". Clarification of this training standard and the schedule for obtaining such training is needed, as construction inspectors currently do not have the specified qualifications.

Response: The annual reports from prior years indicate that most of the Permittees already have an inventory of construction sites. The requirement for a database would enhance information sharing and provide a comprehensive view of the potential dischargers to the MS4s. We expect that having such a database which identifies the universe of dischargers within its jurisdiction would be useful in the permittees' implementation and documentation of their storm water program. Some changes have been made to the deadline to provide adequate time for all Permittees to comply with this requirement.

With respect to lack of resources to implement the additional inspection provisions,

we encourage the Permittees to look into the cost saving and efficiencies in using existing inspection programs. The permit offers the cities the ability to prioritize these sites based on threat to water quality, and therefore utilize limited resources in a way that will result in maximum benefit. The Enforcement/Compliance Strategy (E/CS) has already identified the existing inspection programs. The revisions to the inspection program recognizes permittees' desire to utilize and build upon the existing program.

Table 1

Compliance/Assistance Program (C/AP) Countywide Industrial/Commercial Inspections with NPDES Stormwater Component			
<ul style="list-style-type: none"> Initiated in 1999 Funded by NPDES Benefit Assessment 1999-2001 Accomplished outreach 2002 Began utilizing survey form to document facility stormwater compliance status Conducts inspections under CUPA responsibilities 			
<i>Agency</i>	<i>Department</i>	<i>Inspections (numbers approximate)</i>	<i>Facilities inspected (typical)</i>
Riverside County Environmental Health Department	Hazardous Materials Department	<ul style="list-style-type: none"> 3000 facilities Visits sites one time every two years 	Hazardous Waste Generators <ul style="list-style-type: none"> dry cleaners auto repair & body shops manufacturing facilities
Riverside County Environmental Health Department	Environmental Services Division Food Services Dept	<ul style="list-style-type: none"> 3000 facilities Visits sites 3x annually/stormwater component once per year 	Retail food facilities <ul style="list-style-type: none"> Restaurants Gas stations

Enforcement/Compliance Strategy (E/CS)

Table 2

Existing Local Industrial/Commercial Inspections Non-NPDES Municipal Inspections with Urban Runoff related components			
<ul style="list-style-type: none"> Funded by respective program source (Non-NPDES) Accomplished outreach, confirmation of General Permit coverage, report IC/ID incidents 			
<i>Agency</i>	<i>Department</i>	<i>Inspections</i>	<i>Facilities inspected (typical examples)</i>
County of Riverside/California Department of Forestry	Fire	To be determined	General industrial activities
City of Riverside	Wastewater pre- treatment (source control)	3000	Food processing Car washes Dry cleaners Pool, lake, fountain cleaning Restaurants Floor cleaning Auto repair, paint, or maintenance Carpet, drape & furniture cleaning Painting & coating
	Fire	5800 (fire code) 825 (CUPA)	Auto repair / gas stations Dry cleaners Education facilities Medical facilities Printing / publishing

Enforcement/Compliance Strategy (E/CS)

Table 2 (Cont.)

Existing Local Industrial/Commercial Inspections Non-NPDES Municipal Inspections with Urban Runoff related components			
<ul style="list-style-type: none"> Funded by respective program source (Non-NPDES) Accomplished outreach, confirmation of General Permit coverage, report IC/ID incidents 			
<i>Agency</i>	<i>Department</i>	<i>Inspections</i>	<i>Facilities inspected (typical examples)</i>
City of Corona	Wastewater pre-treatment (source control)	2600	Electroplating & metal finishing Food processing Dry cleaners Plastics Fabricated metals Pharmaceutical Pulp & paper Steam electric Printing/publishing Silk screen
	Fire	2700 (fire code) 600 (CUPA)	
City of Hemet	Fire	2000 Facilities inspected once every 3 years	
City of Norco	Fire	600 non-household businesses	Also inspects schools, residential care & board facilities

Enforcement/Compliance Strategy (E/CS)

Existing Local Industrial/Commercial Inspections

Table 3

<i>Agency</i>	<i>Department</i>	<i>Ordinance violations handled by municipal crews (typical)</i>
County of Riverside	Code Enforcement	<ul style="list-style-type: none"> ▪ Citizens dumping oil, paint, anti-freeze into storm drain ▪ Washing construction equipment into city streets ▪ Improper disposal of products used on residential properties, such as unused herbicides ▪ Inadvertent gasoline overflow (spill) during delivery to filling station
City of Beaumont	Code Enforcement	
City of Canyon Lake	Code Enforcement	
City of Corona	Code Enforcement	
City of Lake Elsinore	Code Enforcement	
City of Hemet	Code Enforcement	
	Public Works/Streets	
	Refuse Division	
City of Moreno Valley	Code Enforcement	
City of Perris	Code Enforcement	
City of San Jacinto	Code Enforcement	
City of Riverside	Code Enforcement	

B. RESPONSE TO Riverside County Board of Supervisors (May 10, 2002)

- 30 **Comment: Schedule of Permit Approval** - *In a Regional Board letter dated April 19, 2002, it was indicated that the decision to hold a second workshop and the public hearing schedule would be based on comments received prior to and at the May 31, 2002 Regional Board workshop. Be advised that this Board strongly recommends a **second workshop be held in Riverside County**. The draft permit has far-reaching implications for the businesses and residents of Riverside County. The NPDES effort is based on the public's understanding of these requirements. This process begins with facilitating public discussion of the permit in the local area. Consistency with other permits (as referenced in the Regional Board letter) should not be the reason to restrict a full discussion of the permit for Riverside County, which has its own unique set of adopted programs and water quality issues.*

Response: The comments received to date have been from three groups. Regional Board staff have been meeting with the Permittees and have offered to meet with the other groups. At the permittees' request, the Board at the September 6th Board meeting in the City of Loma Linda conducted a second public workshop. Written comments on the draft permit will be received until September 20, 2002. There will also be an additional opportunity for the public to voice their comments to the Board at the October 25th public hearing in the City of Corona.

- 31 **Comment: Proposed Waste Discharge Requirements** - *The Riverside County Flood Control and Water Conservation District (District) and County Executive Office (CEO), in correspondence dated May 10, 2002 and April 8, 2002 respectively, have raised concerns regarding the Findings of Fact and proposed Waste Discharge Requirements (WDR). Many of the proposed requirements prescribe new programs to be implemented by the County, District, and cities (Permittees). With respect to Riverside County's water quality conditions, Lake Elsinore is the only water body identified by the Regional Board as impaired by urban runoff. The County and District are working actively with Regional Board staff in applying the San Jacinto Watershed Storm Water Permit and developing a TMDL for Lake Elsinore. This Board requests a program-specific response regarding the water quality benefit of each program proposed in the Tentative Order. For example, the purpose and expected water quality improvement that is expected to result for each of the proposed inspection and database implementation programs should be specified. The cost of implementing the programs proposed in this Tentative Order should not be underestimated: the early County estimate is \$5 to \$8 million dollars, annually, to implement the proposed inspection programs in the unincorporated area.*

Response: Regional Board staff have met several times with the Permittees and have modified many of the findings to reflect Riverside County characteristics as well as clarified the requirements in the Order. Please refer to the revised draft permit.

With respect to the request for a cost benefit analysis of each program requirement, please note that the order incorporates the requirements specified in the Clean Water Act and its implementing regulations. Consistent with the Clean Water Act, the Permit requires compliance with water quality standards specified in the Basin Plan. Cost benefit analysis is performed during the Basin Plan development, and not during its

implementation through waste discharge requirements. This is the third term MS4 permit for the permittees. The first two term permits included similar provisions as required under the federal laws and regulations. The MS4 permits generally do not have numeric limits; the permittees are required to reduce the discharge of pollutants to the MEP. The order specifies that increasingly more effective BMPs must be developed and implemented if water quality standards, as specified in the Basin Plan are being violated. All MS4 permittees are expected to meet certain MEP standards and the State Board has stated the following in its WQ Order No. 2000-11:

[I]f a permittee employs all applicable BMPs, except those where it can show that they are not technically feasible in the locality, or whose cost would exceed any benefit to be derived, it would have met the [MEP] standard. MEP requires permittees to choose effective BMPs, and to reject applicable BMPs only where other effective BMPs will serve the same purpose, the BMPs would not be technically feasible, or the cost would be prohibitive.¹

An iterative process is structured to allow permittees the flexibility to try low-cost BMPs and to evaluate the effectiveness of those BMPs. The permittees have the opportunity and flexibility to propose additional and/or different BMPs. Also please refer our response to Comment 18.

We are unable to provide any comments on the estimated cost for implementing the inspection program in the unincorporated area as no supporting documentation was provided by the Permittees.

- 32 **Comment: Compliance Schedule** - *The Tentative Order requires the Permittees to individually and collectively, conduct 22 program reviews and revise and develop 36 programs within 18 months, ignoring any funding or manpower limitations. Even with the existing permit, the Environmental Health Department has indicated that they are understaffed by 30% because of the difficulty in recruiting and retaining staff in this field. The compliance schedules do not recognize the logistical, statutory, procedural and budgetary realities faced by the County in attempting to comply with these requirements. These schedules need to be revised in consultation with all the Permittees to provide for attainable compliance.*

Response: Please refer to the revised schedule. As mentioned in our response to Comment 31, many of the provisions are similar to those required in the first and second term permits. New provisions such as the SUSMP type requirements in this permit have provided for a phase-in period to allow the Permittees to develop a regional approach or to modify their existing procedures to implement other control measures required by the permit. In the interim, the Permittees are required to continue implementing their current new development program (Supplement A and Attachment) that also require implementation of structural and non-structural controls.

¹ State Board Order No. WQ 2000-11 at page 20.

- 33 **Comment: Safe Harbor** - *As currently written, the unrealistic provisions of the proposed Tentative Order will necessarily place the County in a position of non-compliance regardless of any actions the County takes to achieve compliance. The non-compliance risk is increased by the number of vague and ambiguous terms used in the permit, i.e. 5 million "impressions" are to be made annually in the public education program. Also, it should be recognized that the County's unincorporated area is within three Regional Board areas, each with its own requirements. It is imperative that the County's ongoing efforts be protected through a "safe harbor" provision, if it is to have any reasonable chance to focus on implementing the permit rather than defending itself from third party suits.*

Response: As a result of various meetings with the permittees, additional definition of terms and clarifying language have been provided. Please refer to the revised draft.

With regard to the addition of a "safe harbor" provision, please refer to our response to Comment 23.

C. Response to "Handouts" at the May 31, 2002 Workshop

34. **Comment: Conclusions - Field Investigation of the RCFC&WCD Storm Drain Outlets into the Santa Ana River**

Nine of the twelve RCFC outfalls to the Santa Ana River investigated had insignificant non-storm flows and significant down stream infiltration zones before their confluence with the Santa Ana River main stem. Three of the twelve outfalls did have non-storm flows to the Santa Ana River main stem flows, but their contributions are not significant (1 to 2% of total flow).

Response: Please note that the permit regulates storm water runoff from the permitted area. The permittees are required to eliminate non-storm water discharges except for those authorized under Section II.C. of the proposed MS4 permit. From the above comment, it appears that the permittees have eliminated most of the non-storm water discharges. However, during a storm event, the permitted area drains into the Santa Ana River. The pollutant loads from non-storm water and storm water runoffs have not been fully determined.

The DAMP (at page 2-4, 1993) indicates that lead, copper, manganese, zinc, BOD, hardness, and nitrates for some of the dry weather samples analyzed exceeded the water quality objectives in samples collected prior to the DAMP. The August 30, 2000, Santa Ana Report of Waste Discharge (ROWD) indicated that in order to assess long-term trends and BMP effectiveness more data points were needed, with at least 5 samples (of similar types) obtained for many years. A July 8, 2002, draft submittal of the "Preliminary Evaluation of Selected Water Quality Monitoring Stations", prepared by the Permittees, indicates that the present monitoring and reporting program data set is insufficient and inconclusive. "...The data associated with the stations identified

by Regional Board staff [for the subject study] is inconclusive in identifying potential impacts on receiving water... the effect of Urban Runoff must be segregated from the effects of pollutants contributed by sources other than Urban Runoff. The Monitoring Program ... must be restructured.” (Section 3.6.1, page 3-13). The report further notes “...The Monitoring Program currently being implemented was developed by the Permittees in 1994 and reviewed by the Regional Board and has not been revised subsequently. It is clear that the Permittees and the Regional Board have increased their understanding of the data necessary for a monitoring program that adequately supports decision-making to efficiently and effectively improve water quality.”(Section 4.1, page 4-1). As such, we anticipate that the Permittees will quickly evaluate the current monitoring program and sampling locations and propose a new integrated monitoring program. In addition, flow measurements must be added to the Monitoring and Reporting Program to determine pollutant loading from Urban Runoff to Receiving Waters.

D. RESPONSE TO CITY OF LAKE ELSINORE (MAY 10, 2002)

35. **Comments & Responses:** *The comments are similar to those submitted by the RCFC&WCD. Please refer to our response to Comments 1-29 submitted by the RCFC&WCD (May 10, 2002)*

E. RESPONSE TO CITY OF PERRIS (MAY 10, 2002)

36. **Comments & Responses:** *The comments are similar those submitted by the RCFC&WCD. Please refer to our response to Comments 1-29 submitted by the RCFC&WCD (May 10, 2002)*

F. RESPONSE TO NATURAL RESOURCES DEFENSE COUNCIL (MAY 9, 2002)

37. **Comment:** *As an initial matter, it appears that the Draft Permit is very similar to earlier drafts of the Waste Discharge Requirements for the San Bernardino County Department of Public Works, the County of San Bernardino, and the Incorporated Cities of San Bernardino County Within the Santa Ana Region, Areawide Urban Storm Water Runoff, Order No. R8-2002-0012 (“San Bernardino County permit”), which was adopted by the Board on April 26, 2002 and the Waste Discharge Requirements of the County of Orange, the Orange County Flood Control District and the Incorporated Cities Within the San Ana Region, Areawide Urban Storm Water Runoff, Order No R8-2002-0010 (“Orange County permit”), which was adopted by the Board on January 18, 2002. Thus, the Draft Permit appears to suffer from many of the same problems found in the earlier drafts of the San Bernardino County and Orange County permits. As a result, many of our comments are identical to those made via letters dated February 8, 2002, February 25, 2002, and April 8, 2002 with regard to the San Bernardino Permit and July 20, 2001, October 18, 2001, November 14, 2001, and December 17, 2001 with regard to the Orange County Permit. We appreciate the Santa Ana Regional Water Quality Control Board’s (“Regional Board” or “Board”)*

recent efforts regarding storm water pollution, including its effort to make some important changes in the final versions of the San Bernardino County and Orange County permits. However, based on our review of all of the regional municipal storm water permits during this past permitting cycle, this Draft Permit, including the portions of the Report of Waste Discharge ("ROWD") and associated Drainage Area Management Plan ("DAMP") that we have been able to obtain, is one of the weakest permits in the region in terms of controlling polluted runoff - the number one source of water pollution in southern California. Over a decade ago, the United States Environmental Protection Agency observed that storm water pollution and dry weather urban runoff are "increasingly important contributors of use impairment as discharges of industrial process wastewaters and municipal sewage plants come under increased control . . ." 55 Fed. Reg. 47990, § I (Nov. 11, 1990). Storm water harms surface waters in part because it contains most, if not all, of the pollutants of greatest concern.

Response: At the request of the Regional Board, a comparison matrix was prepared to compare the major components of three recent MS4 permits from Southern California Regions (San Diego Region's south Orange County permit, Santa Ana Region's north Orange County permit and the Los Angeles Region's Los Angeles permit). The matrix only compared the major components; it was not a word-by-word comparison of the permits. The north Orange County permit is similar to the Riverside County draft permit. Therefore, this comparison matrix is applicable to the Riverside County draft permit. This matrix indicates that the core requirements of the three permits are very similar. Implementation of the NPDES municipal storm water requirements allows for differences from location to location. Although the storm water issues are similar across the board, the magnitude of the existing problem/sources in Riverside County is different than LA. Hence, this permit specifies detailed performance standards in critical areas but it also provides flexibility to the Permittees to propose programs and policies that may be regional or site-specific. The proposed order also recognizes the programs and policies the permittees have developed and implemented as required by the earlier versions of the Riverside County MS4 permit.

38. **Compliance Assurance:** *As discussed in our comment letters on the draft Orange County and San Bernardino Permits, the Regional Board's enforcement and audit program for municipal entities has been virtually non-existent during the last ten years due to inadequate funding. This violates the terms the State of California's agreement with the United States Environmental Protection Agency allowing the Regional Board to implement this NPDES permit program—and is also a violation of the Clean Water Act. See Storm Water Program Five-Year Work Plan at V-9 (State of California, 1994). While recent budget augmentations have improved Regional Board capacity in this regard, it is unclear whether the Regional Board can meet its own minimum inspection and audit requirements: a minimum of one annual inspection and audit of each municipal entity during each year of the term of the new Permit. Does the Board intend to meet these requirements and, if so, how will it do so?*

Response: The five-year workplan established a framework and setup goals and

objectives for the State's storm water program. The goals and objectives were predicated upon full funding to implement this program. One of the program goals was to evaluate the municipal program annually through offsite and onsite audits. During the last twelve, even with the limited resources allocated for the storm water program, we conducted both offsite and onsite audits and have taken a number of enforcement actions against municipalities for violations of the MS4 permits. A recent audit of the Regional Board's NPDES program by US EPA (p. 16-17) states, "RB8 conducts annual compliance inspections of their MS4 Permittees" and on page 25 it states, "RB8 has developed a protocol for in-depth audits for the MS4 Permittees". Therefore, NRDC's assumptions are not based on facts. Last year, the storm water program budget has been augmented. A review of our files will indicate that frequency of our municipal program audits and our enforcement activities have significantly increased with the budget augmentation. The Board intends to optimize use of its resources to meet or exceed its work plan commitments.

39. **Comment:** *The last sentence of Finding 18 should be deleted and the following language should be added to the Draft Permit: The Permittees shall revise their DAMP, at the direction of the Regional Board Executive Officer, to incorporate program implementation amendments so as to comply with regional, watershed specific requirements, and/or waste load allocations developed and approved pursuant to the process for the designation and implementation of Total Maximum Daily Loads (TMDLs) for impaired water bodies. In addition, the Fact Sheet should be revised accordingly.*

Response: Please see revised language, requested changes made.

40. **Comment: Pollution in Storm Water:** *Local studies in Southern California have established that urban runoff has very serious impacts in rivers, streams, and the ocean. The L. A. County Municipal Storm Water Permit provides multiple references to studies and data regarding storm water impacts, and this information should be covered in the draft Permit, as well. We suggest revising the findings of the Permit to more completely reflect the known impacts of polluted runoff on receiving waters.*

Response: We agree that there are a lot of publications on the impact of urban runoff on receiving water quality. A number of these studies are referenced in the Fact Sheet and the findings. We agree that it is not an exhaustive list; however, additional references are not going to strengthen the permit.

41. **Comment:** *Although the Draft Permit and Fact Sheet identify five water bodies located within Riverside County that are listed as impaired under the Clean Water Act section 303(d) list and require TMDLs (Draft Permit at 5 Finding 17; Fact Sheet at 10), this list is not complete. The ROWD identifies four additional water bodies: Chino Creek, Reach 1, Chino Creek, Reach 2, Mill Creek (Prado Area), and Prado Lakes. ROWD at 4-10. The Draft Permit should identify and include these additional water bodies as impaired and requiring TMDLs. Further, the Draft Permit fails to recognize that storm water runoff in Riverside County enters into water bodies that flow/drain into water bodies outside the County that are listed as impaired on the section 303(d)*

list. See, e.g. Santa Ana River Reaches 3 and 4. Additionally, during large storm events, dams along the lower Santa Ana River are lowered to allow flows to continue to coastal waters, causing impacts there. We therefore suggest revising the findings of the Draft Permit to more completely reflect the known impacts of polluted runoff on all receiving waters.

Response: Some of the findings have been changed to indicate that the flows from the Riverside County areas may reach the Pacific Ocean under heavy storm conditions (see Findings 28, 45, 46).

Table 4, page 4-10 of the ROWD is only a partial listing of the surface water bodies in the Santa Ana River Basin as referenced on page 4-9 of the ROWD. This table does not specifically refer to those water bodies in Riverside County. However, upon closer review of the four additional water bodies referenced in the comment we find that Chino Creek - Reach 1, Chino Creek - Reach 2, and Prado Lakes would require a major rise in the water level in the lake behind Prado Dam in order for storm water from Riverside County to impact these water bodies. Cucamonga Creek-Valley Reach and Mill Creek (Prado Area) are water bodies within, Riverside County or water bodies that could reasonably receive storm water from Riverside County. However, upon closer review of this area it is primarily a non-urban area with dairies and agricultural land use that are currently exempt from this permit. The current references seem to be more appropriate for urban storm water runoff from the permitted area.

42. **Comment: Discussion of Monitoring Results.** *The Draft Permit lacks any meaningful discussion of monitoring results obtained under the previous two permit terms. It is inappropriate that the Draft Permit fails to discuss particular pollutants of concern as identified in current monitoring efforts by the Permittees. ...The Draft Permit's lack of consideration and information on monitoring results effectively precludes the Regional Board from making an informed decision on its administrative action to renew the permit. It also precludes the Board from conducting or supporting an anti-degradation analysis, as discussed in the next section. Equally important, the Draft Permit's failure to include or even acknowledge information on monitoring results violates 40 C.F.R. § 122.26(d)(2)(iii)(A)(3), which requires that such quantitative data be provided to the Board in the permit application process.*

Response: Additional discussion is included regarding the monitoring results in Findings 33, 34, and 35. The annual reports provide a statistical summary of the analyses performed on water samples collected from dry weather outfalls, wet weather outfalls, and receiving water locations. In addition, the DAMP (1993), Table 2-1 provides a listing of the pollutants of concern for Riverside County.

43. **Comment: Lack of Anti-degradation Analysis.** *The Draft Permit does not include an anti-degradation analysis, contrary to legal requirements. The stated basis for excluding such analysis is that the Permit will improve water quality and that the storm water discharges are consistent with state and federal anti-degradation requirements. This is far from clear.... The Board's present finding that "loading rates" will be*

reduced is devoid of support and cannot stand on its own; in addition, the corollary finding that, therefore, the quality of receiving waters will improve does not follow necessarily. As per SWRCB Order No. 90-5, anti-degradation analysis is required.

Response: The proposed Permit includes additional requirements to control the discharge of pollutants. Based on additional requirements specified in this Permit, there is no reason to believe that water quality degradation will take place upon implementation of the provisions of the proposed Permit and other programs (DAMP, monitoring program) and policies and programs of the Riverside County storm water program. NRDC's assertion that WQ 90-5 is applicable to this Permit is invalid because, unlike the permits discussed in WQ 90-5, this Permit does not allow the discharge of toxic pollutants in greater quantity than had been allowed in previous permits. Therefore, no further anti-degradation analysis is necessary.

44. **Comment: Deferral of Compliance.** *The Draft Permit proposes to delay compliance with many provisions for a period of one to three years. See, e.g., Section V (Legal Authority requirement delayed until 2003); Section VI (Illegal/Illicit Connection requirement delayed until 2003-2004); Section VII (Sewage Spill requirements delayed until 2003); Section VIII (New and Redevelopment requirements delayed until 2004). This approach does not assure that an adequate storm water program will be implemented concurrent with the issuance of the permit itself. There is simply no justification for such extraordinary delays, especially as applied to the most basic storm water control actions.*

Response: The requirements specified in the 1990 and 1996 Permits have been met. The Permittees have programs in place to address illegal discharges/illicit connections and most other provisions of the federal regulations. However, additional and improved BMPs are needed to be in full compliance with the water quality standards. The adequacy of Permittees' legal authority needs to be periodically reviewed and updated, hence this continues to be a permit requirement. There are time schedules included in the Permit for further improvements to the existing programs in consideration of the fact that the municipalities need to obtain additional funding through a budget process.

45. **Comment: Finding Regarding Natural Background Pollutants.** *Finding 4 states that the Order "is not intended to address background or naturally occurring pollutants or flows." Draft Permit at 1. However, the San Bernardino, Orange County, and Los Angeles County storm water permits do not include such a provision. In order to have consistency among storm water permits in this region, this provision in Finding 4 should be deleted.*

Response: Please see revised language which is similar to Finding 13 in the San Bernardino permit and Finding 17 in the Orange County permit.

46. **Comment: Finding Regarding Focus of NPDES Program.** *There is no evidence in the record to support the claim in Finding 5 that "[f]rom 1972 to 1987, the main focus of the NPDES program was to regulate conventional pollutant sources such as sewage treatment plants and industrial facilities. As a result, non-point sources, including agricultural runoff and urban storm water runoff, now contribute a larger portion of many kinds of pollutants than the*

more thoroughly regulated sewage treatment plants and industrial facilities.” Please explain the purpose of this statement in the Permit. Ultimately, this statement should be deleted from the Permit because there is no explanation of its purpose, the conclusion it makes is unsupported, it is not included in the San Bernardino County, Orange County, or Los Angeles County permits, and it is not necessary.

Response: Please see subsequent clarifying language (Findings 7, 8, 9, 10) that outlined the chronology of CWA amendment and requirements that expanded the regulatory focus to other sources of pollution, including storm water.

47. **Comment: Finding Regarding DAMP.** *We object to the statement in Finding 6 that “[t]he Permittees are implementing an approved drainage area management plan (DAMP) that properly manages urban runoff from these sources in those portions of the permitted area under their jurisdiction.” Based on our review of the portions of the DAMP that we have obtained so far, it is completely inadequate and is not “properly managing runoff.” Thus, Finding 6 is completely unsupported.*

Response: Referenced statement has been deleted.

48. **Comment: Finding Regarding Definition of MEP.** *Finding 8 should be deleted entirely. This type of finding does not appear in the San Bernardino or Orange County permits and does not provide any information necessary for the Permit. The standard used to regulate industrial storm water is not relevant to this Permit. Further, as discussed in more detail below, the definition of Maximum Extent Practicable (MEP) found in footnote 2 should be revised to be consistent with the definition provided in the San Bernardino County permit. Not only will this provide needed consistency between these two counties, the MEP definition used in the San Bernardino County permit provides for clear and concise definition and is consistent with the Clean Water Act (see full discussion below).*

Response: Please see revised language. The finding itself is consistent with the federal laws and regulations and provides additional clarification. The definition of MEP referred to in Finding 8 has been moved to the Glossary, Appendix 4.

49. **Comment: Finding Regarding Area Wide Permits.** *Cooperation among Riverside, San Bernardino and Orange counties is critical for an effective watershed management program. Thus, consistent with the findings in the San Bernardino permit, Finding 9 should include a statement which states “[f]or an effective watershed management program, coordination among the regulators, the municipal permittees, the public, and other entities is essential.”*

Response: Please see revised language, requested changes made in Finding No. 39.

50. **Comment: Finding Regarding Beneficial Uses.** *Although Finding 24 of the Draft Permit discusses protecting beneficial uses, there is no finding that contains or lists the beneficial uses of the water bodies. Please add a finding listing the beneficial uses, similar to findings in the San Bernardino and Orange County permits.*

Response: Please see revised language in Finding No. 24 of the August 23, 2002 version of the Order. The beneficial uses are listed.

51. **Comment: Finding Regarding Receiving Waters.** *Finding 29 states that the permittees must ensure, "to the MEP," that flows from the MS4s do not cause or contribute to an exceedance of the water quality objectives in the receiving waters. The State Board has directed regional boards to include specific receiving water limitations language in all municipal storm water permits. See Environmental Health Coalition SWRCB WQ 98-01 (1998), amended by SWRCB WQ 99-05 (1999). The State Board language does not include the "to the MEP" language contained in Finding 29.*

Response: The receiving water limitations language in Section III is consistent with State Board Orders No. 99-05 and 2001-15. It is not necessary to have the exact language in the finding.

52. **Comment: Finding Regarding Previous Monitoring and Reporting.** *Although Finding 32 states that the principal permittee administered the monitoring and reporting program from 1995 through 2000, the Draft Permit contains no discussions regarding the data results from this monitoring. The permit should include the monitoring data from this time period as well as any conclusions drawn from the data, similar to the discussion in the San Bernardino permit.*

Response: Findings No. 33, 34, and 35 have been added to address this comment.

53. **Comment: Finding Regarding Violation of Water Quality Standards.** *There is no evidence in the record to support the claim in Finding 41 that the nature of storm water discharges requires additional time to determine whether these discharges are causing or contributing to violations of water quality standards. Storm water controls have been in place for over a decade and monitoring data and other public documents demonstrate the storm water discharges, at a minimum, are contributing to water quality objective violations. There is also no evidence to demonstrate that the "iterative" process described to assess the contribution of storm water to these violations has been implemented or that any additional BMPs have been designed or implemented to correct violations. Finding 41 states "the Order establishes an iterative process to maintain compliance with the receiving water limitations." However, if the receiving water limitations are being met, then there is no need for the iterative process since the iterative process is a way of meeting receiving water limitations. Thus, the sentence should be changed from "maintain" compliance to "achieve" compliance.*

Response: Please see revised language, appropriate changes were made in Finding 45.

54. **Comment: Finding Regarding Failure to Include Numeric Effluent Limits.** *There*

is no evidence to support the claim in Finding 48 that numeric effluent limits are not appropriate because “the impact of the storm water discharges on the water quality of the receiving waters has not yet been fully determined.” Draft Permit at 11. As we have described: (1) monitoring has been conducted for more than ten years; (2) there is evidence connecting storm water runoff to receiving water violations in the region; (3) the Section 303(d) List notes that runoff contributes to the impairment of many receiving waters as does the Permit itself (see e.g., Draft Permit at 5, Finding 17); and (4) federal regulations required that the permittees provide specific information on annual pollutant loads and event mean concentrations for pollutants ten years ago, in 1990. 40 C.F.R. § 122.26(d)(2)(iii). For all of these reasons, significant evidence exists to prove that storm water has the reasonable potential to cause or contribute to the violation of applicable water quality standards. Accordingly, numeric effluent limits are mandatory under 40 C.F.R. Section 122.44. The Regional Board must make this finding and, further, must among other things conduct a reasonable potential analysis and thereafter insert numeric effluent limits in the Permit.

Response: The issue of numeric effluent limits in MS4 permits has been appealed and decided by the State Board and the courts. Both the State Board (Memorandum from Craig Wilson to Edward C. Anton dated 03/15/01) and the Ninth Circuit Court of Appeals (9th Cir. 1999, 191 F.3d 1159) have determined that numeric effluent limits are not required in MS4 permits.

55. **Comment:** Findings Characterizing the Permittees’ “State-of-Mind.” *There is no basis for the Board to characterize the belief or “state-of-mind” of any permittee. See e.g., Draft Permit at 12 (Finding 53 stating that “the permittees recognize the importance of watershed management . . .”) The Board has no evidence to support such findings; thus they are not appropriate. Permit Section I, Responsibilities. The Draft Permit states that co-permittees’ activities should include “[response] to emergency situations such as accidental spills, leaks, illegal discharges/illicit connections, etc. to prevent or reduce the discharge of pollutants to storm drain systems and waters of the U.S.” Draft Permit at 15. However, this should be listed as a responsibility, not an activity. See e.g., San Bernardino County Permit at 17.*

Response: Please see revised language at Finding 55, and Section I.A.g. Requested changes have been made.

Permit Section II, Discharge Limitations/Prohibitions.

56. **Comment:** Paragraph E states that “[w]hen a discharge category is identified as a significant source of pollutants to waters of the United States, the Permittee shall either: Prohibit the discharge category from entering its MS4; or ensure that structural and non-structural BMPs are implemented to reduce or eliminate pollutants.” We object to the second clause as an option to addressing discharge categories that are identified as significant sources of pollution. Such an option is illegal. The Clean Water Act clearly mandates that if a discharge category is a significant source of

pollution, that source should be effectively prohibited. 33 U.S.C. § 1342(p)(3)(B)(ii). The second option proposed above would not accomplish this because it appears to allow only a reduction in pollutants in the discharge.

Response: The referenced federal regulations are:

“(B) Municipal discharge

Permits for discharges from municipal storm sewers--

(i) may be issued on a system- or jurisdiction-wide basis;

(ii) shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers; and

(iii) shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.”

Response: The proposed language is consistent with 33 U.S.C. § 1342(p)(3)(B)(iii). The second clause referred to in paragraph F (formerly paragraph E) provides the opportunity for the Permittees to install structural treatment BMPs to eliminate or reduce the discharge of pollutants. In addition, Paragraph C addresses the need for a De Minimis permit if the referenced discharges become significant sources of pollutants.

57. **Comment:** *Second, the Draft Permit also allows a discharge exemption for discharges covered by “written clearances issued by the Regional or State Board.” Draft Permit at 16. However, it is still unclear what is meant by the reference to “written clearances issued by the Regional or State Board.” Draft Permit at 16 (Paragraph C-1). What is a “written clearance”?*

Response: Please see revised language, waiver² has replaced “written clearance”.

58. **Comment:** *Several discharge limitation/prohibitions provisions that are contained in the San Bernardino permit (and other permits throughout the region) have been omitted from the Draft Permit. These provisions should be included in the Riverside Permit. The provisions are:*
- Non-storm water discharges from permittees’ activities into waters of the U.S. are prohibited unless the non-storm water discharges are permitted by an NPDES permit or are included in paragraph 3 of this section.*
 - Discharges from the MS4 shall be in compliance with the discharge prohibitions contained in the Basin Plan.*
 - Discharges from the MS4s of storm water, or non-storm water, for which a permittee is responsible, shall not cause or contribute to a condition of*

² See Water Code Section 13269

nuisance as that term is defined in Section 13050 of the Water Code.

Response: The Basin Plan language has been added to Section II.H. Also, please see Section III. B. for nuisance language.

Permit Section III, Receiving Water Limitations.

59. **Comment:** *Paragraph A of the receiving water limitations section, should be modified to include the following underlined language:*

“[d]ischarges from the MS4 shall not cause or contribute to exceedances of receiving water quality standards (designated beneficial uses and water quality objectives contained in the Basin Plan and attachments thereto) for surface waters or ground waters.”

Response: Please see revised language. The clause “and amendments thereto” is appropriate and will be added in the next revision.

60. **Comment:** *Paragraph E of this section sets forth the procedures required for exceedances of water quality standards including a provision which allows 90 days for “Permittees to revise the DAMP and monitoring and reporting program to incorporate the approved modified BMPs that have been and will be implemented, the implementation schedule and any monitoring required.” What is the justification for increasing the processing time to 90 days? Under the San Bernardino Permit, the Permittees are given 30 days to implement the same process. The Draft Permit should be modified to shorten the time to 30 days for this process.*

Response: Ninety days are provided to simply update the DAMP to incorporate BMP modifications proposed by the Permittees that have been approved by the Executive Officer. This provides a reasonable time period for the Principal Permittee to coordinate with the Co-Permittees. Alternatively, as noted in paragraph E.1, these changes would be incorporated into the DAMP at the next annual update. This timeline does not affect the implementation schedule of the approved modified or additional BMPs necessary to reduce pollutants that are causing or contributing to the exceedance of water quality standards.

Permit Section V, Legal Authority/Enforcement.

61. **Comment:** *Paragraph A states that “[p]ermittees shall continue to maintain and enforce adequate legal authority to control the contribution of pollutants to the MS4 by storm water discharges” Draft Permit at 19. This provision should not be limited by the clause “by storm water discharges.” Rather, the paragraph should read: “permittees shall maintain and enforce adequate legal authority to control contributions of pollutants to the MS4.” This change is necessary to be consistent with the Clean Water Act and other permits in the region.*

Response: Please see revised language.

62. **Comment:** *Paragraph B refers generally to an “Enforcement Guidance.” What is the “Enforcement Guidance” to which this refers? Where may it be found? Is it in the DAMP? We cannot evaluate these provisions without access to the documents, which are cited here.*

Response: The Enforcement Guidance Document referenced in the permit may be found on the Regional Board website:
http://www.swrcb.ca.gov/~rwqcb8/rcpermit/RC_ENF.pdf.

63. **Comment:** *Paragraph E requires the permittees to review their ordinances to assess their effectiveness in prohibiting a variety of non-storm water discharges to the MS4. Draft Permit at 20. As noted above, the permittees must already be able to prohibit these discharges, and should have been able to do so for the last decade. What, therefore, is the basis of this request? Further, we object to the clause that states “the Permittees may propose appropriate control measures in lieu of prohibiting these discharges, where the Permittees are responsible for ensuring that dischargers adequately maintain those control measures.” Under the Clean Water Act, the permittees are directed to “effectively prohibit” these discharges. This is the standard that must be applied.*

Response: This language is consistent with the language proposed as an alternative by Defend the Bay and the National Resources Defense Council (NRDC) – dated April 8, 2002, and accepted in Order No. R8-2002-00012 for the San Bernardino County MS4 permit.

Permit Section VI, Illicit Connections/ Illegal Discharges.

64. **Comment:** *The Draft Permit does not contain any overarching performance standard directing specific, affirmative actions to eliminate illegal and illicit connections. Instead, the Draft Permit only requires that the permittees continue to prohibit these connections and activities through their ordinances and to continue to implement inspection and monitoring programs, (Draft Permit at 21); and specifies a time frame in which investigation and remedial action must occur once a problem activity or connection is discovered. Id. at 21-22 (Section VI (A)-(E)). However, the Draft Permit does not contain any express schedule of targeted actions, such as inspections. Also, the Draft Permit does not contain any program to catalogue (and update on an ongoing basis) both permitted and non-permitted connections to the MS4 system, a step that is a predicate to effective management of the system and interdiction of illicit or illegal activities. By contrast, the Los Angeles Permit requires permittees to “eliminate all illicit and illegal discharges . . .” LA Permit at 51-53. The Los Angeles County permit also sets forth a specific schedule of inspections and also requires that a full database be maintained that identifies all permitted and un-permitted connections to the storm drain system. Id. The San Diego permit similarly contains affirmative requirements to “actively seek and eliminate illicit discharges and connections” and “eliminate all detected illicit discharges . . . immediately.” San Diego*

County Permit at 36 [Section F.5]. Given that we are ten years into the program, the Draft Permit should be revised to contain specific and affirmative requirements regarding the immediate elimination of illicit connections and discharges consistent with these other third round MS4 permits in the region.

Response: During the first and second term of the permit, the Permittees have completed a comprehensive survey of their storm drain systems for illicit connections and have taken corrective measures for those found. Their current program is to focus on locating and preventing or correcting illicit connections as part of their Enforcement/Compliance Strategy. The Strategy provides the Co-Permittees up to ten days to respond to any newly discovered illicit connections. The Permit allows up to 60 days for these illicit connections/illegal discharges to be corrected.

65. **Comment:** *Paragraph C of the Draft Permit should be modified so that it is similar to the San Bernardino permit, which states “[t]he Permittees shall implement appropriate control measures to reduce the discharge of pollutants, including trash and debris, to waters of the United States. These control measures shall be reported in the annual report.” San Bernardino Permit at 22.*

Response: Please see revised language.

Permit Section VIII, New Development.

66. **Comment:** *This section of the Permit is inconsistent with the MEP standard because it fails to include a current program requiring the installation of structural best management practices (SUSMP provisions) as required by the State Water Resources Control Board in Order WQ 2000-11 (“Order”). The State Board’s Order clearly holds that these SUMSP provisions constitute MEP for new and redevelopment. The Order also states that all new municipal storm water permits that are adopted must be consistent with these SUSMP principles. Specifically, the Chief Counsel of the State Board who expressly notified all Regional Board executive Officers that: [M]unicipal storm water permits must be consistent with the principles set forth in [the Order]. The Order finds that the provisions of the SUSMPs [Standard Stormwater Mitigation Plans], as revised in the Order, constitute MEP. Memorandum from Craig M. Wilson, Chief Counsel, to RWQCB Executive Officers (December 26, 2000) (attached hereto). Pursuant to the State Board Order, the Permit must require that a SUSMP program equivalent to or more stringent than that approved by the State Board be implemented immediately by the permittees. Therefore, the lengthy delay provided in the Permit for implementation of such a program is inappropriate. Further exacerbating this problem with delay, footnote seven opens a massive loophole. This footnote essentially exempts projects with approved tract maps but without building or grading permits at the time the program finally goes into effect sometime in 2004 from the SUSMP requirements. Also, we would like to point out in this connection that there is no inconsistency between the SUSMP provisions and regional approaches to storm water pollution mitigation. NRDC and Defend the Bay support regional approaches, but they are not substitutes for the SUSMP program. In*

addition, the Draft Permit contains no such proposed or adopted regional program that can be evaluated or implemented immediately pursuant to the State Board's directive. This omission is also inconsistent with Clean Water Act regulations that require new development and redevelopment structural controls. 40 C.F.R. Section 122.26(d)(2)(iv)(a)(2). Thus, this section of the Draft Permit must be modified to reflect current law. Finally, the omission of a SUSMP program in a growing area like Riverside County is difficult to comprehend. Few California counties still have an ability to protect water quality through the timely use of structural controls in new development. For all of these reasons, this omission constitutes a significant abuse of discretion.

Response: The Permittees have an existing program for new developments that requires structural and non-structural controls (Supplement A to the Riverside County Drainage Area Management Plan). The Permittees are required to continue to implement this program until development and implementation of regional water quality management plans or the numeric sizing criteria (SUSMPs) are implemented. These provisions are consistent with the State Board's directions and Order No. WQ. 2000-11. We feel that the cut-off date as the date of discretionary approval of tentative tract/parcel map or permit is advantageous. This provides an opportunity for the municipalities to require treatment or infiltration devices and long-term operation and maintenance responsibilities included as part of the local conditions for project approval. Similar cut-off dates were included in our Construction Permit for San Jacinto Watershed and the Orange County MS4 permit. Based on our experience with these permits, it does not appear that such a cut-off date will create any sudden rush to get developments approved.

67. **Comment:** *The Draft Permit does not sufficiently contain the required description of "existing structural . . . controls . . . that are currently being implemented" nor "a description of structural . . . control measures to reduce pollutants from runoff from commercial and residential areas . . . that are to be implemented during the life of the permit, accompanied with an estimate of the expected reduction of pollutant loads." 40 C.F.R. §§ 122.26(d)(1)(v)(A), 122.26(d)(2)(iv)(A).*

Response: Please see revised language and the revised Appendix 4 - Glossary.

68. **Comment:** *Paragraph A improperly limits the requirement to ensure that a construction project has an NOI on file to construction sites over five acres. The Draft Permit should be modified to also address project sites on less than five acres consistent with current law as well as the other storm water permits in the region. This can be accomplished by revising Paragraph A to delete the phrase "on five acres of land or more" and instead refer to all construction projects that are required to obtain coverage under the General Permit.*

Response: Please see revised language.

69. **Comment:** *Paragraph B-1 contains a list of new development/significant redevelopment projects for which permittees are required to review their WQMP to ensure that existing*

requirements are adequate and to revise their WQMP accordingly. Draft Permit at 26. Retail gasoline outlets are conspicuous for their absence from this list. What is the justification for not including this category of facilities? The regulation of retail gasoline outlets is critical to reducing polluted urban runoff because retail gasoline outlets are one of the highest priority sources of pollutants into storm water. See LA County Permit at 3. Failure to include retail gasoline outlets in this program is inconsistent with MEP.

Response: Retail Gasoline Outlets (RGOs) were removed from the list of projects requiring additional BMPs based on the State Board's SUSMP decision, Order WQ 2000-11. State Board concluded that because RGOs are already regulated and may be limited in their ability to construct infiltration facilities or to perform treatment, they should not be subject to the BMP design standards at this time. The State Board recommended that the Regional Board undertake further consideration of a threshold relative to size of the RGO, number of fueling nozzles, or some other relevant factors. However, the State Board indicated that the decision should not be construed to preclude inclusion of RGOs in the SUSMP design standards, with proper justification, when the MS4 permit is reissued. The March 1997 California Stormwater Quality Task Force BMP Guide for RGOs can be used by the Permittees as a starting point in drafting BMP requirements for RGOs. However, the Permittees can require other BMPs, as they deem necessary.

Permit Section IX, Municipal Inspection Program.

70. **Comment:** *The Draft Permit's Municipal Program is woefully deficient as compared to inspection programs under other permits, including San Diego, Ventura and the Los Angeles storm water permits. See e.g., LA County Permit at 27- 34. Further, the Draft Permit's inspection program is deficient across all areas, including construction sites, industrial facilities, and commercial facilities. Thus, the program set forth in the Draft Permit cannot meet the Clean Water Act's MEP standard. For instance, the inspection program lacks basic requirements to track, inspect, and ensure compliance at facilities that are critical sources of pollutants in storm water. The Draft Permit also fails to provide detailed requirements and schedules for inspections that are tailored to each type of facility within the broader construction, industrial, and commercial categories. See LA County Permit at 29-31. Instead, the Draft Permit provides generic "one-size fits all" requirements for all types of facilities. The Draft Permit also fails to address and require inspections of other critical sources such as Phase I industrial facilities as identified by the United States Environmental Protection Agency, restaurant facilities, and other federally mandated facilities as specified in 40 C.F.R. 122.26(d)(2)(iv)(C). See LA County Permit at 28; 40 C.F.R. § 22.26(d)(2)(iv)(A)(5) and B (1). The Los Angeles County Permit contains such provisions and should be used as an example. See LA County Permit at 28-32. Further, the Draft Permit is considerably behind in its inspection programs as compared to other permits since it is only now requiring, in the third round of the permit, that inventories of the facilities and model maintenance procedures be established. These are only a few examples of the numerous deficiencies in the municipal inspection program. Due to all of these deficiencies, the program described in the Draft Permit is not consistent with MEP.*

Response: We feel that the permit requirement to inventory and prioritize sites with respect to threat to water quality along with the revised frequency of inspection based on site prioritization is adequate. The site prioritization and inspection schedules are based on threat to water quality. This requirement provides measurable goals absent from the previous term permits for Riverside County. Despite of its absence in previous permits, most Permittees have conducted the required inspections and reported them annually. Also, in spite of not having any specific requirements, the permittees have reported their street sweeping activities on an annual basis. The data gathered over the years will guide the permittees in optimizing their maintenance activities that would benefit water quality. The permit incorporates minimum performance requirements that we feel is consistent with MEP.

71. **Comment:** *Paragraph A-5 discusses municipal inspection of construction sites and states that “[w]ithin two working days of a discovery, each Permittee shall provide oral or e-mail notification to the [Regional Board] of noncompliant sites” Why are the permittees allowed two working days to notify the Regional Board? Two-working days seems excessive considering that the San Bernardino permit requires permittees to notify the Regional Board of non-compliant sites within 24 hours of discovery. San Bernardino Permit at 24.*

Response: Please see revised language.

72. **Comment:** *Paragraph C-8 discusses municipal inspection of commercial facilities and states that “[w]ithin two working days of a discovery, each Permittee shall provide oral or e-mail notification to the [Regional Board] of noncompliant sites” Again, why are the permittees allowed two working days to notify the Regional Board of non-compliant sites? The permittees should be required to notify the Regional Board of non-compliant sites within 24 hours of discovery. Also, why are the permittees allowed 10 days to submit a written report to the Regional Board instead of five days as required by the San Bernardino permit?*

Response: Please see revised language.

73. **Comment:** *In addition, due to the particular characteristics of Riverside County, the storm water program fails to include provisions to deal with pollutants from dairies and/or other concentrated animal feeding operations (“CAFOs”) in the region. This is particularly perplexing given that it is well understood that these dairy CAFOs are a major source of pollution into storm water in the region. See Santa Ana Region Basin Plan. This is specifically expressed in both the Basin Plan for the Santa Ana Region as well as the 1998 Section 303(d) list of impaired water bodies, which lists these dairies as sources of impairing pollutants. From a regulatory perspective, storm water inspections are required for industrial and commercial facilities. Storm water*

discharges from CAFOs are industrial discharges covered under this rubric. Indeed, these dairy CAFOs are regulated under their own Regionwide Dairy General Permit, which specifically states that it supplants the dairies' previous coverage under the statewide General Industrial Storm Water Permit. See SARWQCB Order No. 99-11, General Waste Discharge Requirements for Concentrated Animal Feeding Operations (Dairies and Related Facilities) Within the Santa Ana Region, Finding 9. Therefore, the inspection program should be revised to include requirements for inspections of concentrated animal feeding operation facilities.

Response: As noted in your comment, Order No. 99-11, General Waste Discharge Requirements for Concentrated Animal Feeding Operations (Dairies and Related Facilities) regulates these facilities. These sites are by Regional Board staff on a regular basis. In addition, with two exceptions as per federal regulations, Order 99-11 prohibits discharge from these facilities off-site.

Permit Section X, Education and Outreach.

74. **Comment:** *No evidence is presented to demonstrate that the program required by the Draft Permit meets the MEP standard, especially in light of evidence that the program is significantly less comprehensive than programs being implemented by comparable entities in the region.*

Response: The permit requirements include many public education and outreach activities and responsibilities of the Permittees, and compliance with these provisions should constitute an effective program. It also requires that a survey be conducted to measure the changes in awareness as a result of the education programs. Staff will monitor compliance with these provisions of the permit to further determine its effectiveness.

Permit Section XI, Municipal Facilities Programs and Activities.

75. **Comment:** *The Draft Permit fails to provide specific program requirements for:*

- *Sewage System Maintenance, Overflow, and Spill Prevention*
- *Vehicle Maintenance/Material Storage Facilities/Corporation Yard Management*
- *Landscape and Recreational Facilities Management*
- *Storm Drain Operation and Management*
- *Streets and Roads Maintenance*
- *Parking Facilities Management*
- *Public Industrial Activities Management*
- *Emergency Procedures (other than fire)*
- *Treatment Feasibility Studies*

See LA County Permit at 45-51.

Response: Requirements for Sewage Spill Response and Prevention may be found in Section VII. A. Please also refer to our response to comment 20.

Requirements for Storm Drain Operation and Management may be found in Section XI. F, G and H.

Requirements for Streets and Roads Maintenance may be found in Sections XI. F, L & M, and,

The existing program for Storm Drain Operation and Management, Streets and Roads Maintenance, Vehicle Maintenance/Material Storage Facilities/Corporation Yard Management, and Public Industrial Activities Management, are described in the Municipal Facilities Strategy or the DAMP. We need more information on what requirements for Treatment Feasibility Studies, Parking Facilities Management, and Emergency Procedures (other than fire) are being referred to in this comment to determine whether these are already addressed in the permit or other documents.

76. **Comment:** *Critically, the program in the Draft Permit does not even contemplate developing a storm water pollution prevention plan, as included in other storm water permits and required by law. See 40 C.F.R. §122.26(d)(iv). In the Los Angeles County MS4 permit, the permittees are required to prioritize catch basin locations, based on potential loading (sub-watershed land uses) and clean high priority catch basins on a monthly basis during the wet season. Consequently, Section XIV.7 requires the permittees to develop and implement a catch basin inspection/maintenance schedule similar to the proposed Los Angeles County MS4 permit. Similarly, the storm drain operations and management section is conspicuously sparse in the Draft Permit. In fact, the Draft Permit does not even contain minimum requirements for catch basin inspection and cleaning. In contrast, for many years, Los Angeles County and many other entities have cleaned 100% of the catch basins annually, prior to the rainy season. See e.g. County of Los Angeles Implementation Manual, Volume IX (at 3-2) (relevant portions are attached hereto). In sum, there is no evidence that the Draft Permit's municipal facilities programs and activities meet the MEP standard. Moreover, the Draft Permit requires the permittees to implement a "Municipal Facilities Strategy" to endure that public agency activities do not cause or contribute to a condition of pollution or nuisance in receiving waters. First, what is this Municipal Facilities Strategy? Again, without this information, we cannot provide comprehensive comments on the proposed program. Moreover, the public agency activities and facilities must meet all of the discharge prohibitions and receiving water limitations in the Permit, not just California Water Code section 13050. See Draft Permit at 37, Paragraph C.*

Response: Please see Section XII.C and XII.D. requiring the Permittees to have a SWPPP and comply with all "terms and conditions of the latest version of the State's General Construction Activity Storm Water Permit that are applicable" except filing a NOI with the State Board. This includes preparing and implementing a Storm Water Pollution Prevention Plan (SWPPP) and a monitoring program consistent with the State's General Construction Activity Storm Water Permit. Under the Tentative Order, the Co-Permittees will continue to comply with the State's General Construction Activity Storm Water Permit by filing the NOI with the Regional Board and preparing and implementing a monitoring program and SWPPP.

The Municipal Facilities Strategy can be found on our website at: http://www.swrcb.ca.gov/~rwqcb8/rcpermit/RC_MUN.pdf.Catch. The permit also includes requirements to inspect, clean, and maintain storm water conveyance systems (see Section XI.F of August 23, 2002 draft).

Permit Section XII, Municipal Construction Projects/Activities.

77. Comment: *As proposed, the Draft Permit's municipal construction projects/activities section appears to provide a blanket authorization to discharge without any conditions. Specifically, paragraph A is worded in a way that infers this. This language should be corrected to be more specific as to what is allowed under the Permit. At a minimum, the program must require compliance with the MEP standard and all terms, conditions and requirements of the statewide general construction permit and/or the San Jacinto Watershed Storm Water Permit. Again, the program in the Draft Permit is far inferior to similar programs in other permits issued in the region. For instance, in addition to the problems noted above, the requirements of storm water prevention plan, as mentioned in paragraph D, should be described in detail. Overall, this program is improper, as it does not meet the MEP standard.*

Response: Paragraph A has been revised to include reference to the most recent General Construction Permit. The requirements and description of the SWPPP noted in paragraph D also reinforces the point that the requirements applicable to construction sites covered under the General Construction Activities Permits are also applicable to similar municipal construction projects.

Monitoring and Reporting Program (Appendix 3).

78. Comment: *The Permit's monitoring and reporting program does not contain any specific monitoring requirements. Instead, the Program requires the permittees to submit a program for approval by the Executive Officer within one year of adoption of the permit. Appendix 3 at 1-2. This is improper for several reasons.*

First, the one-year time period creates too long of a delay before the monitoring program can be implemented. If the Permittees wished to develop their own program, they should have submitted a draft program with the ROWD and permit application so that it could have been reviewed and approved by the Board along with the Permit. Then the program could have been implemented upon adoption of the permit, providing at least a year or maybe more of additional data.

Second, the proposed process for adoption of a monitoring program does not allow for public notice and comment. This leads to the situation where the public is not given a chance to review and provide feedback on the proposed monitoring program, which is an integral part of the Permit as well as the means by which

Permit compliance may be determined. It also makes it difficult to determine whether the ultimate program is adequate to meet the requirements of state and federal laws. This does not comport with public notice requirements under the Clean Water Act. Third, although the Permit sets forth a few general monitoring program component requirements (Appendix 3 at 2), these monitoring program requirements are not sufficiently specific. This again makes it difficult to review and comment on the adequacy of the monitoring program to meet the goals of the Permit and the Clean Water Act. For instance, the Program

requires that the permittees develop a monitoring program that contains components such as mass emissions, microbes, toxicity and land use correlation. However, there is no requirement for a basic receiving water quality monitoring component for standard constituents or bioassessment requirements. Even if these might be part of an existing program, it should be mentioned and acknowledged in the Permit's monitoring and reporting program. In addition, the requirements under each of the components that are listed are too vague and basic to provide adequate direction for the ultimate monitoring program that is developed. Fourth, general monitoring and reporting provisions found in the federal regulations are not specifically included in the Permit. See e.g., 40 C.F.R. §§ 122.41 and 122.26 Fifth, the monitoring programs under the various municipal storm water permits, including Riverside, San Bernardino, northern and southern Orange, and San Diego counties, should be comparable and provide consistent data. Given this, the minimal program that is laid out in the Draft Permit should ensure that this program is at least similar to and consistent with other monitoring programs. However, the draft program does not appear to accomplish this. As just one obvious example, the San Bernardino County permit states that San Bernardino County is acting in coordination with Riverside County. (San Bernardino Permit at 63.) Yet the Draft (Riverside) Permit does not include a similar reference. Similarly, the following requirements for a monitoring program that appear in the San Bernardino Permit are missing from Paragraph C-3-e of the Draft Permit:

- Characterization and identification of sources of pollutants in storm water runoff*
- and an assessment of the influence of land use on water quality;*
- Identification of significant water quality problems related to storm water discharges within the watershed;*
- Evaluation of the effectiveness of existing management programs, including an*
estimate of pollutant reductions achieved by the structural and nonstructural BMPs;
- Evaluation of sources of bacteriological contamination in the Santa Ana River in*
coordination with San Bernardino County;
- Identification of those waters which without additional action to control*
pollution
from storm water discharges cannot reasonably be expected to attain or

*maintain
applicable water quality standards specified in the Basin Plan; and
• Analysis and interpretation of the collected data to determine the impact of
storm
water runoff and/or validate any water quality models. These are all important
components of a monitoring and reporting program and should be added to
the requirements of the Draft Permit.
Finally, we urge the Board to consider and adopt a more comprehensive
monitoring and reporting program into the Permit itself that sets forth specific
requirements such as sampling locations and mass emissions stations,
numbers of samples to be taken, constituents to be analyzed, bioassessment
requirements, sampling frequencies, sampling methodologies, QA/QC, and
TRE specifications. We refer the Board to the Monitoring and Reporting
Program included in the Los Angeles Permit, attached hereto, which provides
an example of a detailed and comprehensive storm water monitoring program
sufficient to meet all of the goals set forth in the Permit and under the Clean
Water Act.*

*The inclusion of a comprehensive program in the Permit itself would solve most of the
problems raised above and would also provide much greater direction for the
permittees, ensure that the program meets all of the Permit's goals and goals of the
Clean Water Act, and also ensure that an effective program is implemented in a much
shorter timeframe.*

Response: We disagree that submittal of a program at a later time is inappropriate. The permittees have conducted monitoring for the last 10 years. It is appropriate to evaluate the data obtained from the program, other regional programs, ongoing TMDL efforts and re-evaluate the monitoring program. Development of an integrated monitoring program will maximize the funds and efforts invested. Coordinated effort will require time. The monitoring objectives specified in the monitoring and reporting program will dictate the number of monitoring stations, number/type of samples, location, etc.

Please refer to Appendix 3, Section II. F, C, N, O, A, and E for the referenced missing items.

Permit Section XVI, Permit Expiration and Renewal.

79. **Comment:** *Paragraph A discusses the requirements for a Report of Waste Discharge. This section is missing the requirement "to include any new or revised program elements and compliance schedule(s) necessary to comply with the receiving water limitations section." While this provision is included later in the Permit, it should be in this section on ROWD requirements.*

Response: The proposed language was added to Section XVI.A.2. of the draft Order.

80. **Comment:** *Due to the expected development of TMDLs, paragraph B should explicitly state that the Order may be modified, revoked or reissued prior to its expiration date to incorporate any requirements imposed upon the permittees through the TMDL process.*

Response: The proposed language was added to Section XVI.B.5. of the draft Order.

81. **Comment:** ***Definition of MEP:** The Draft Permit contains a footnote with a mini-definition of MEP and a full definition of MEP in the glossary section. As an initial matter, these definitions should be identical. Second, both of these definitions are inconsistent with the terminology used in the Clean Water Act. The Clean Water Act and its implementing regulations do make any mention whatsoever of “feasibility.” The term is maximum extent practicable, not maximum extent feasible. We have seen nothing in the Clean Water Act, from EPA, or from the State Board to suggest such an equivalency and the two terms are not synonymous. It is entirely unclear where this definition came from, as it is not consistent with either EPA’s interpretation of MEP in the regulations or the State Board’s definition of MEP, as set forth in the memo of February 11, 1993. To avoid any further problems with this definition, we propose that the definition of MEP in both places be deleted and replaced with the definition used in the San Bernardino County Permit. This definition has been used in other area storm water permits as well, which is important for uniformity. For your convenience, the language is as follows:*

MEP means the standard for implementation of storm water management programs to reduce pollutants in storm water. CWA section 402(p)(3)(B)(iii) requires that municipal permits “shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants. Specifically, municipalities must choose effective BMPs, and reject applicable BMPs only where other effective BMPs will serve the same purpose.

Response: Please refer to the MEP definition in the Glossary – Appendix 4.

82. **Comment:** *Based on the above, the Draft Permit itself is seriously inadequate and contains many deficiencies in comparison to other storm water permits. It is difficult to understand how the Regional Board can propose to issue such a grossly deficient Permit to tackle southern California’s largest source of water pollution.*

Response: We disagree. Compliance with the storm water program contemplated by this order should result in the development and implementation of continuously more effective BMPs, and that, along with requirements for compliance with TMDLs should result in water quality improvements.

G. Response to Construction Industry Coalition on Water Quality (May 13, 2002)

Fact Sheet

83. **Comment: Pg. 1, ¶ 1A.** *"Urban storm water runoff consists of dry and wet weather flows through storm water conveyance systems from urbanized areas." This statement should read urban runoff, not urban storm water runoff. Urban storm water runoff only relates to wet weather flows, not dry weather flows. This line should comply with the San Bernardino permit. Therefore, storm water should be deleted from the sentence.*

Response: Please see revised language.

84. **Comment: Pg. 2, ¶ 1A** *"However, properly planned high-density development, with sufficient open space, can reduce urban sprawl and problems associated with sprawl. Urban in-fill development can be an element of smart growth, creating the opportunity to maintain relatively natural open space elsewhere in the area." While this statement may be true in a given instance, it has no place in this Permit. As a matter of fact, urban in-fill development by its very nature is more than likely to create a high percentage of impervious area on a particular development, thus being in direct conflict with other stated goals, such as maximizing pervious area, in this Permit. Smart-growth and other planning efforts in Riverside County should be left where they belong and that is the Riverside County Integrated Plan.*

Response: We are supportive of smart growth and low impact development concepts in designing new developments. However, the concept suggested, analogous to implementation of mitigation measures to allow disturbance of an environmentally sensitive area, entertains the concept of an equal exchange; i.e. no net loss of a habitat or destruction of a sensitive area. When this concept is applied to urbanization in a previously undeveloped area, equal exchange is not achievable as there will always be a net loss of undisturbed land.

We agree that in a comprehensive planning process which includes urban in-fill development or urban sprawl into previously undeveloped areas, all factors must be considered and the projects should be designed to minimize any adverse environmental impacts.

85. **Comment: Finding 32, Pg. 8:** *The Permittees have been spending a lot of money on storm water monitoring, however it does not appear that any of this information is being used to direct Permit requirements. As noted by the monitoring results specified in this section, as well as monitoring results from other regions, residential land-use has not been identified as containing elevated pollutant levels, yet new residential development continues to be targeted heavily in municipal storm water permits. The monitoring data being collected should be used to target requirements and thus limited resources on high-priority areas of concern, not on areas that do not*

warrant a high level of concern.

Response: The number of enforcement actions based on evidence collected by Regional Board staff during inspections of construction sites indicates that constructions sites continue to be a significant source of pollutants in storm water runoff. Furthermore, monitoring requirements are an integral part of all NPDES permits and they are critical to define water quality status and trends, to identify sources of pollutants, to characterize pollutants and to evaluate the effectiveness of existing management programs.

86. **Comment: Finding #55, Pg. 12.** *In promulgating MS4 permits, the Regional Board has routinely relied upon Water Code section 13389 to exempt itself from CEQA's requirement that all actions impact the environment be analyzed completely for the public benefit. However, this statement vastly overstates the CEQA exemption. This Permit fails to appreciate the statutory scheme of Chapter 5.5 of the Water Code (containing Section 13389) which was not enacted to excise independent state law requirements from CEQA, but simply to ensure that the regional boards could comply with the minimal requirements of the federal Clean Water act without having first to conduct an EIR. This concern is absent for permit provisions not required by the Clean Water Act.*

Response: Contrary to the comment, the provisions of this permit do not go beyond the requirements of the Clean Water Act. Accordingly, as the State Board recently concluded, CEQA does not apply in the manner asserted. Please see SWRCB Order WQ 2000-11. Also, please refer to our response to Comment 15.

87. **Comment: Part IV. Receiving Water Limitations, Pg. 17, Item #A.** *This provision is not consistent with, and in fact violates, SWRCB Order No. 99-05. In fact, it is the "shall not cause or contribute" language that Order 99-05 expressly struck and replaced. "It is hereby ordered that Order WQ 98-01 be amended to remove the receiving water limitation language contained therein and to substitute the EPA language." (Order 99-05, p.1, emphasis added.) The "EPA language" referred to does not include the "cause or contribute" language that was present in Order 98-01. On the contrary, the EPA language outlines a series of practicable safeguards to reasonably accomplish Basin Plan objectives. Thus, this Permit's strict receiving water prohibitions do not comport with Order 99-05. Further, Order 99-05 expressly includes in its language that it is a "precedential decision," unlike the SUSMP Order. Order 99-05 states outright that the "cause or contribute" language of 98-01 is removed and replaced with the language of Order 99-05. The provisions are mutually exclusive, and Order 99-05 resolved which controls.*

Response: The "cause or contribute" language found in Section IV.1, Receiving Water Limitations, is essentially identical to that found in the Receiving Water Limitation section of the San Diego County Permit. The State Board in Order WQ 2001-15, found the Receiving Water Limitations in the San Diego County Permit to be

consistent with SWRCB Order WQ 99-05. Therefore, the “cause or contribute” language is appropriate.

88. **Comment: Part IV. Receiving Water Limitations, Pg. 17, Item #B.** *The requirement “Discharge of storm water, or non-storm water from MS4s for which a Permittee is responsible, shall not cause or contribute to a condition of nuisance as the term is defined in Section 13050 of the Water Code” is not included in the San Bernardino Permit and no justification has been provided as to why Riverside County’s permit should be different with respect to this requirement. Therefore, this item should be deleted.*

Response: This requirement has been deleted from the Receiving Water Limitations Section and moved to the Discharge Limitations/Prohibitions section (Section II.I) consistent the San Bernardino permit.

89. **Comment: Part XII. New Development, Pg. 24, Item #5.** *By virtue of this reference, and numerous others like it throughout the Permit, it is clear that the Permit attempts to regulate not only the quality of water, but quantity of water as well. Under the CWA’s NPDES program, the Regional Board is empowered to regulate pollutants. This does not include quantities of water, absent some showing that the regulation is aimed at pollutants, not simply the existence of a volume or flow rate the Regional Board deems undesirable.*

Response: We are not asserting that “volume” and “flow” should be considered as pollutants. However, it is a well-known fact that increased volume and/or flow through a natural channel could cause increased erosion and carry additional pollutants, such as sediment. Unless such controls are in place, upstream development could have significant adverse impacts on downstream beneficial uses, including aquatic resources. Therefore, such controls should be a part of the overall MS4 program. The preamble to the EPA Phase II storm water regulations states that for post-development, “consideration of the increased flow rate, velocity, and energy of storm water discharges must be taken into consideration in order to reduce the discharge of pollutants, to meet water quality standards, and to prevent the degradation of receiving streams.”³

Further, the Clean Water Act authorizes the states to control flows that impair beneficial uses.⁴ U.S. EPA guidance points out that impacts on receiving waters due

³ 64 Fed. Reg. 68722, 68761 (Dec. 8, 1999)

⁴ See *Public Utilities District No. 1 v. Washington Det. Of Ecology*, 511 U.S. 700 (1994), where the U.S. Supreme Court held that states can establish minimum levels of flow under the Clean Water Act in order to protect the beneficial uses of receiving waters. Although a section 401 certification, the Supreme Court’s reasoning clearly stands for the proposition that states may establish conditions to protect state water quality standards. While in PUD No. 1 the standard was protected via certification, here the Regional Board exercised its unquestionable jurisdiction under section 402(p) of the Clean Water Act and established flow limits in natural channels to protect aquatic habitat.

to changes in hydrology can often be more significant than those attributable to the contaminants found in storm water discharges.

90. **Comment: Part XII. New Development, Pg. 24, Item #5a.** *Whether or not intended, there can be no question that the provisions of the Permit have a tremendous impact on the land use decision-making authority of local agencies. To name just a few, the Permit mandates CEQA changes, General Plan amendment procedure changes, and limitation on land uses in areas designated ESAs, regardless of the fact that preexisting designations on which the Permit relies had nothing to do with storm water considerations.*

Response: Storm water and other environmental impacts must be considered early on in the planning stages of a project. The draft permit requires the Permittees to review their planning documents to determine if water quality protection principles and policies are properly addressed in those documents. These consideration does not, however, as suggested, infringe on the Permittees' land use authority. Please refer to our response to Comments 7 and 28.

91. **Comment: Paragraph 9, Page 25: Review and revise, as necessary Watershed Protection Principles** *The implementation deadline for this requirement is 3 months less than the deadline included in the San Bernardino Permit. The implementation date should be revised to allow at least the same amount of time. We are also very concerned with the use of the words maximize and minimize in these requirements. The statement, "to the extent technically and economically feasible, should be added to each of these requirements.*

Response: The implementation deadline has been revised.

92. **Comment: Paragraph 10, Page 25: Review and revise grading/erosion control ordinances.** *The implementation deadline for this requirement is at least 4 months shorter than the applicable requirement in the San Bernardino Permit and should therefore be edited for consistency.*

Response: The implementation deadline has been revised.

93. **Comment: Paragraph 7, Pg. 24.** *Protection of beneficial uses of receiving waters sounds like something that everyone should support. However, upon further review, it becomes evident that some beneficial uses (municipal water supply, rec1, etc.) within some receiving waters are not practicable or achievable within the realm of MEP. These beneficial uses were last updated in the 1995 Basin Plan. The problem with this last update is that there is no proof that achievability, housing, or other economic factors were considered when these beneficial uses were established.*

Response: Please note that most of these beneficial uses were established during the development of the 1975 Basin Plan. The requirement to consider the above stated factors (Water Code Section 13241) was adopted later. The 1975, 1984, and the 1995 Basin Plans were developed and adopted with public input and consistent

with State and federal laws and regulations. The draft permit implements the Basin Plan requirements and storm water laws and regulations. As new water quality objectives are established or if existing water quality objectives are revised, these factors will be taken into account. The Regional Board, in adopting Waste Discharge Requirements must implement the current Basin Plan objectives and beneficial uses.

94. **Comment: Part XII, New Development, Pg. 26, Item #1.** *We object to the Permit's "one size fits all" approach to implementation. Lumping all of these development categories into the same regulatory program ignores obvious thresholds that would result in development and regulatory savings without compromising the efficacy of the program. Specifically: 1) subjecting a 10-unit affordable infill housing project to the same regulatory standards as a 100,00 square-foot commercial shopping center defies logic. The foreseeable impacts of such projects are vastly different, necessitating different levels of regulation and enforcement. The Permit should reflect the obvious realities. 2) The Permit should distinguish between respective land use categories and the types of contaminants of concern associated with such land uses. To subject all land uses across the board to a one-size fits all regulatory mandate misdirects precious resources in unnecessary ways.*

Response: These requirements are consistent with other MS4 permits recently adopted by the Santa Ana, Los Angeles, and the San Diego Regional Boards and recent State Board decisions. The issue had been subjected to intense scrutiny during the SUSMP process at the Los Angeles Regional Board. The Los Angeles SUSMP requirements and the San Diego MS4 permits were appealed the State Board. Please see State Board Orders WQ 2000-11 and WQ 2001-15. The State Board has deemed the SUSMP requirements as MEP.

95. **Comment: Part XII, New Development, Pg. 26, Item 1g.** *The State Board expressly rejected the inclusion of environmentally sensitive areas (ESAs) as a "development category" in Order WQ 2000-11. In particular, the State Board held that the proposal to include ESAs was inappropriate for three reasons: (1) the proposal lacked meaningful application thresholds; (2) such areas are already subject to "extensive regulation under other regulatory programs"; and (3) ESAs are not a "development category." (SWRCB Order WQ 2000-11, pp. 24-25[hereinafter "SUSMP Order"].)*

Response: Reference to environmentally sensitive areas has been deleted and replaced with "areas designated in the Basin Plan as waters supporting habitats necessary for the survival and successful maintenance of plant or animal species designated under state or federal law as rare, threatened, or endangered species (defined in the Basin Plan as "RARE")."

96. **Comment: Paragraph 3, page 27:** *The goal of the WQMP should not be to ensure that urbanization does not significantly change the hydrology for the site. The hydrology for a site is going to be changed with urbanization. The goal of the WQMP should be to reduce, to the MEP, the pollutant impacts to the receiving waters from the changes in this hydrology.*

Response: This term has been deleted.

97. **Paragraph 3b, page 27:** *The statement “The discharge of any listed pollutant to an impaired waterbody on the 303(d) list shall not cause or contribute to an exceedance of receiving water quality objectives.” requires additional clarification. What if the discharge is into a water body not impaired, however that water body eventually discharges into an impaired water body?*

Response: This statement refers to all discharges of a listed pollutant to an impaired water body on the 303(d) list, not merely direct discharges. This language has been revised.

98. **Comment: Part XII. New Development, Pg. 33, Item #3.** *The implementation of regional and/or watershed management programs is the most effective means of dealing with our storm water runoff water quality concerns. Regional solutions offer the following advantages over the site-by-site approach: 1) teamwork “buy in”, 2) potential for grants to fund capital costs, 3) economies-of-scale which provide opportunity to cost-effectively address pollutants of concern, 4) ability to establish maintenance districts and 5) large-scale solutions which can be planned and modified to address future regulations (i.e., TMDLs). For these reasons, it is imperative that this Permit provide every opportunity for the regional solutions to be developed and submitted to the executive officer for approval. The San Bernardino municipalities have not even begun regional treatment solution discussions. These discussions take a tremendous amount of time due to the potential conflicts that need to be worked out. These conflicts include establishing stakeholder involvement, locating regional solutions, securing land rights (if necessary), designing regional facilities and providing funding mechanisms for both capital and ongoing maintenance costs, etc. As such, we request that the second line of this paragraph be changed to the following: “The permittees shall submit a revised WQMP to the Executive Officer by October 1, 2004. This revised WQMP shall meet the goals proposed in Section XII.B.2, above, and provide an equivalent or superior degree of treatment as the sized criteria outlined below.”*

Response: Please see revised timelines and language. The current language in the draft permit provides flexibility to the Permittees for regional treatment systems or to use the specified numeric sizing criteria.

H. Response to Sempra Energy (May 30, 2002)

99. **Comment:** *The Utilities desires that the following specific language be included in the municipality’s NPDES Permit Discharge Authorization ordinances:*

“The prohibition on discharges shall not apply to any discharge regulated under a NPDES permit issued to the discharger and administrated by the State of California pursuant to Chapter 5.5, Division 7 of the California Water

Code under authority of the United States Environmental Protection Agency, provided that the discharger is in compliance with all requirements of the permit and other applicable laws and regulations.”

This is standard language that normally is included in Water Quality Ordinances, and has been agreed to by the County for its discharge authorization ordinance. This allows the utilities to discharge water from vault & substructure and other discharges from dewatering activities related to construction activities. The utilities hold NPDES (National Pollutant Discharge Elimination System) permits that authorize the discharge of water to national water bodies, which include municipal storm sewer systems. The utilities must remain in compliance with these NPDES permits while performing the dewatering activities.

Response: Section II.C. of the draft Order addresses discharges authorized by a separate NPDES permit.

100. **Comment:** *Each municipality should adopt a model ordinance that meets the requirements of the Municipal Storm Water Permits. The County of San Diego’s Storm Water Ordinance should be used as the model. Consistency between jurisdiction is critical. Developing different Pollution Prevention Plans, Standard Practices, Training Programs, Inspection Programs for each municipality within our service territory would be extremely unwieldy and virtually unworkable.*

Response: Riverside County has adopted a model ordinance that each municipality has used to develop their Urban Runoff Ordinances.

101. **Comment:** *The definition for Land Disturbance Activity in the Municipal Storm Water Permits should not include routine maintenance to maintain the original line and grade, hydraulic capacity, easement, right-of-way, or the original purpose of the facility, nor shall it include emergency construction activities required to protect public health and safety. These activities should be excluded from the definition of Land Disturbance because they are not construction projects as defined by the Municipal Permit SUSMP requirements. The utility activities for grading, trenching, right-of-way/easement maintenance, and for unpaved access road development are usually short-term maintenance projects, not requiring the long-term implementation of BMP’s (Best Management Practices) as defined by the SUSMP requirements. Therefore, the Utilities are asking that Municipalities in developing their storm water ordinances exempt these activities from the SUSMP requirements.*

Response: Section II.C.3. has been modified to include emergency water flows associated with activities to protect public health and safety other than just fire fighting. In addition, the definition of “Land Disturbance” has been added to the Glossary found in Attachment 4. This definition excludes the situation where grass is mowed or just knocked down and the soils are not exposed.

102. **Comment:** *Exempt the unmanned facilities from BMP inspection requirements. The Municipal Permits defines these facilities within the category of “Commercial*

Facilities” and thus requires inspections. These inspections of (BMP's) are required before and after each predicted rain event. It is unrealistic to develop BMP's and Storm Water Pollution Prevention Plans (SWPPP's) for the thousands of unmanned facilities (i.e. substations, compressor stations, vaults and substructures, ect) that have no “Threat to Water Quality” (no pollutants) issues.

Response: The referenced facilities would be classified as Industrial Sites rather than Commercial Sites. In addition, “Oil and Gas facilities that have not released storm water resulting in a discharge of a reportable quantity (RQ)...are not required to be permitted under the Industrial General Storm Water Permit, unless the industrial storm water discharge contributes to a violation of a water quality standard” (Order No 97-03-DWQ). Therefore, any requirements for inspection of oil and gas facilities before and after rainfall events would be based on local ordinances. The municipalities are required to prioritize these sites based on threat to water quality and the inspection frequencies are to be based on this prioritization scheme. If these unmanned sites are not a significant threat to water quality, they are likely to be low priority sites for municipal inspections.

103. **Comment:** *If maintenance and repair activities of vehicles and equipment is conducted under a roofed area or with Structural BMP's, then these activities shall not be prohibited during times of precipitation. The Utilities possesses many indoor garages where there is no threat to water quality from the vehicle maintenance and repair activities because we perform these activities in roofed areas or we implement structural BMP's to prevent storm water pollution.*

Response: We agree. Normal vehicle and equipment maintenance and repair activities conducted within indoor garages would not contribute substantial pollutants to storm water.

104. **Comment:** *Commercial facilities that do not pose a threat to water quality from storm water shall not be defined as “High Priority Commercial Facilities”. The Municipal Storm Water Permits define high priority commercial facilities as those having fueling activities, vehicle maintenance activities, and hazardous material storage areas. If there is no threat to water quality from these activities because they are conducted in roofed areas or are controlled by structural BMP's, then the facilities that conduct these activities should not be categorized as High Priority Commercial Facilities.*

Response: Please see the Response to Comment #101. Oil and Gas facilities referenced would be industrial and not commercial facilities.

105. **Comment:** *Routine maintenance to maintain easements and right-of-ways and related construction should not be categorized as priority projects requiring Post-construction BMP's. These routine maintenance and construction projects are usually short-term, do not create impervious surfaces, are not performed during rain events, and BMP's are normally implemented for storm water pollution prevention. These short-term projects **do not** have the potential to add pollutants to stormwater or to*

affect the flow rate or velocity of stormwater runoff after construction is completed.

Response: Post-construction BMPs are required on all construction sites disturbing 5 acres or more (after March 2003, 1 acre or more). The classification of the site as high, medium, or low, priority does not negate the need for post-construction BMPs.

I. Response to Southern California Water Quality Coalition (May 31, 2002)

106. ***Comment:*** *The Board must take into account societal, economic and technological considerations. To meet the MEP standard, the Board must demonstrate that the Permit requirements can actually be accomplished before requiring certain standards in the Permit. Further, the Board must also demonstrate that the Permit's requirements are economically feasible. It must consider how requiring strict compliance will affect particular local and regional needs, including affordable housing, attracting and retaining local businesses, and encouraging re-development of urban areas. Finally, it is important that the Board consider how the Permit's prohibitions will affect local government's ability to effectively manage local land use and planning.*

Response: a) There are many issues that require consideration in formulating and implementing regulations. Commonly, collective terms such as societal, economic, and technological considerations are used for those issues that are not the major focus of the regulation. In our evaluation of the BMPs in the WQMPs to be submitted by the permittees, factors such as those above will be considered with respect to water quality effects. b) Neither the Water Code nor federal regulations compel reliance on any particular form of economic analysis in the implementation of requirements based on the MEP performance standard; the admonition quoted from 64 Fed. Reg. 68722 & 68732 calls for flexible interpretation of MEP based on site-specific characteristics and "cost considerations as well as water quality effects...." Thus, while the regional board is advised to consider costs as a factor in determining the reasonableness or practicability of requirements, there is no state or federal mandate for a more formal analysis. c) The Permittees are required under CEQA to consider environmental issues in their land use decisions. The permit simply provides guidance on how water quality issues are to be addressed on CEQA reviews and land use planning.

107. ***Comment:*** *The Coalition is concerned that the Permit as written improperly infringes on local governments' land use and planning authority in direct contradiction of federal and state law. Under federal and state law, local land use and planning issues are left to the sound discretion of the local authorities. This is because these local governments are knowledgeable and sensitive to the particular needs of their unique area and population. By imposing mandatory requirements on the permitting and approval of new development and redevelopment projects, the Board improperly infringes on local governments' land use and planning authority.*

Response: The permittees are required under CEQA to consider environmental

issues in their land use decisions. The permit simply provides guidance on how water quality issues are to be addressed on CEQA reviews and land use planning as well as how they may comply with environmental requirements in the exercise of their land use authority. This in no way infringes upon the local land use authority. Please also see our response to Comment 28.

108. **Comment:** *These mandatory requirements will make the development of new projects in Riverside County much more expensive. It is possible that many redevelopment projects will be too cost prohibitive under the Permit thereby inhibiting the economic growth of the region. Instead of containing mandatory requirements, the Permit should simply provide guidance to permittees as they approve and permit development projects. The Coalition requests that the Board revise these requirements so that they are made consistent with state and federal law.*

Response: SUSMP-type requirements for new development and significant redevelopment have been deemed as MEP by the State Board and are consistent with state and federal laws (See State Board Order WQ 2000-11). These requirements are consistently being included in the MS4 permits issued throughout the State. Therefore, the inference that new projects in Riverside County would be more expensive than in other parts of the State due the requirements proposed in this permit is not valid.

109. **Comment:** *The Coalition supports the Construction Industry Coalition on Water Quality ("CICWQ"). We support the CICWQ comment letter dated May 13, 2002, in which it is indicated that the process for making headway on a consensus for watershed projects will be time consuming due to the many factors requiring resolution. As stated by CICWQ, these factors include establishing stakeholder involvement, conducting research and/or studies, locating regional solutions, securing land rights (if necessary), designing regional facilities and establishing funding mechanisms for both capital and ongoing maintenance costs. There are management difficulties in regulating a regional watershed project that may require the establishment of a watershed authority or a joint powers agency. We also support CICWQ's suggested timeline:*

- *Permit adoption (August 2002)*
- *Establish watershed/sub-watershed management framework and stakeholders (January 2002)*
- *Conduct research and/or studies necessary for identifying regional watershed facility locations (July 2003)*
- *Secure land rights and design regional watershed facilities (January 2003)*
- *Establish stakeholder buy-in and create funding mechanisms, such as grants and maintenance districts (June 2004)*
- *Revise WQMP, with regional watershed solution included, and submit to Regional Water Board (August 2004)*

Based on the importance of using regional watershed solutions to address water quality concerns and the need for adequate time, as outlined above, we also request that the compliance date specified in Section VII.B.1 of the Permit be changed from 12

months after the Order's adoption to 24 months after the Orders adoption.

Response: Please refer to the revised timeframes. These will be adjusted to be consistent with the lead-time included in the MS4 permit for San Bernardino and Orange Counties. The current language in the draft permit provides flexibility to the Permittees for regional treatment systems or to use the specified numeric sizing criteria.

110. **Comment:** *The Coalition recognizes that the stakes are very high with regard to the development of a Permit that will improve water quality. Yet, it is important to consider all quality of life issues when adopting this Permit. The absence of any meaningful consideration of these issues, in an effort to improve water quality at any cost, will have an immediate and significant impact on affordable housing, jobs, wages and livability. The Coalition is very supportive of efforts to develop new ways of improving water quality. However, the Coalition also sympathizes with the burden that the cost of implementing this Permit will place on the cities and the unintended negative economic impact that this Permit will likely have on Riverside County. As always, the Coalition is interested in working together with the Board to create a Permit that is practicable, achievable and will result in improved water quality. Our Coalition continues to be concerned about the economic livelihoods of our working families, diminishing new home production, increasing housing costs, and jeopardizing our regional economic strength. We are confident that, by working together, the Coalition can assist you in achieving balance that will greatly improve water quality while also meeting our other regional obligations and needs.*

Response: We agree that in a comprehensive planning process, all factors must be considered and the projects should be designed to minimize any adverse environmental impacts.

J. Response to Megan Fischer – San Diego Regional Water Quality Control Board (April 17, 2002)

111. **Comment:** *In the toxicity monitoring section, it says that "freshwater species" will be used to determine toxicity. However, the sea urchin is a marine species. It is still helpful to do the sea urchin test with fresh water, because that species is sensitive to metals, and still provides an important indicator. I would just suggest changing "freshwater" to "aquatic".*

Response: Please refer to the revised language.